TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~392.~~ 184

SAMUEL OAKMAN AND BENJAMIN W. ELDRIDGE, APPELLANTS,

vs.

CHARLES SAWYER, JOHN B. BROWN, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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5 *Libel.*

UNITED STATES OF AMERICA,
District of Massachusetts:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the first Tuesday (being the third day) of December, in the year of our Lord one thousand eight hundred and sixty-seven:

Before the Honorable John Lowell, judge.

CHARLES SAWYER ET AL., LIBELLANTS,
vs.
SAMUEL OAKMAN ET AL.

The libel was filed in court on the ninth day of November, A. D. 1866, and is as follows, viz:

To the Honorable John Lowell, judge of the district court of the United States for the district of Massachusetts:

The libel of Charles Sawyer, John B. Brown, Philip Brown, John Brown, Henry Fox, Henry H. Furbush, and William Randall, all of Portland, in the State of Maine, and owners of the schooner called the "Bowdoin," against Samuel Oakman and Benjamin W. Eldridge, of Somerville, in said district, merchants and wharf owners, in a cause of tort, civil and maritime; and thereupon your libellants say:

First. That they are the owners of the said schooner, of which said Randall is master; that she is of the burden of two hundred and
6 twenty-six tons, old measurement; that she arrived in the port of Boston on the twenty-second day of October last with a cargo of coal, which, by the bill of lading, was to be delivered at the wharf belonging to the said Oakman and Eldridge, in Charlestown, in the port of Boston and Charlestown.

Second. That, on arrival, the master reported to the said Oakman & Eldridge, and was informed that he must wait until two other vessels which arrived before him could be discharged; that the master thereupon made the said schooner fast in a place where she was reasonably secure, near to said wharf, but where there was some danger of being struck by vessels passing.

Third. That, on Saturday, the twenty-seventh day of said month, the master was requested to haul in to the said wharf, and attempted to do so at high tide in the afternoon, about three o'clock, but was unable, on account of the great strength of the tide; that afterwards the wharfinger requested him to haul in so as to be ready to discharge on Monday morning, pointed out the place where she should be put, and directed him to haul her under the stage erected on said wharf for convenience in discharging.

Fourth. That on the next day the master, desiring to comply with said request, and to put his vessel in a place of greater safety, hauled the said schooner into the place pointed out by the said wharfinger, and made her fast, and, as he believed, in a safe, proper, and secure place and position.

Fifth. That the place where the said schooner was laid, and the dock by the side of the said wharf, were not in a fit and suitable condition for vessels of her size; that the surface of the bottom thereof was hard and uneven, and covered in parts with coal, and was very dangerous for vessels, and that, in consequence thereof, when the said schooner took

the ground at low tide she became badly damaged, strained, twisted, and hogged, masts thrown out of line, rail broken, butts opened, and various other injuries done.

Sixth. That the said schooner was about four months old, was well built, staunch and strong in every respect, and that the said damage was caused exclusively by the bad state of the said dock.

7 Seventh. That the cost of repairing the said damage will be the sum of ten thousand dollars, or thereabouts, for which they seek reparation from the said Oakman & Eldridge, for their fault and negligence in maintaining the said dock in so bad and dangerous a condition, and that they have informed them of their claim, and asked payment thereof, which they have refused, to the damage of your libellants, in the sum of ten thousand dollars.

That all and singular the premises are within the admiralty and maritime jurisdiction of this honorable court.

Whereupon your libellants pray that process may issue against the said Samuel Oakman and Benjamin W. Eldridge, and that they may be summoned to appear and answer the premises, and that your honor would be pleased to pronounce for the damage aforesaid, and to condemn the said Oakman and Eldridge in costs.

CHARLES SAWYER,
For the Libellants.

F. C. LORING,
Proctor for Libellants.

8 *Summons.*

Thereupon, on said 9th day of November, A. D. 1866, by order of the judge, a summons issued, commanding the marshal to summon the said Samuel Oakman and Benjamin W. Eldridge, of Somerville, in said district, merchants and wharf owners, (if they might be found in his precinct,) to appear before this court, to be holden at Boston, within and for the Massachusetts district, on Friday, the 23d day of November, current, at ten o'clock a. m., then and there to answer to said libel, and to make due return of his doings herein.

And the marshal made return thereon as follows, viz:

UNITED STATES OF AMERICA,
Mass. District, ss:

BOSTON, *November* 10, 1866.

Pursuant hereunto I this day summoned the within-named Oakman and Eldridge to appear, as within directed, by giving to each in hand a true and attested copy of this precept.

GEO. H. GORDON,
U. S. Marshal.

9 *Answer.*

On the 22d day of January, A. D. 1867, the following answer of defendants was filed in court, viz:

District of Massachusetts. In admiralty.

The answer of Samuel Oakman and Benjamin W. Eldridge to the libel of Charles Sawyer and others against them.

And now come the said Samuel Oakman and Benjamin W. Eldridge, and answering said libel, say:

First. They do not know who are the owners of said schooner "Bowdoin," nor what her tonnage is.

Second. That they believe it is true that said schooner arrived at the port of Boston on or about the 22d day of October last, with a cargo of coal, which, by the bill of lading, was to be discharged at one of the wharves occupied by the respondents.

Third. That it is true that, on the arrival of said schooner, the master was requested to wait until one vessel, the "S. P. Smith," then discharging at the berth at which the "Bowdoin" was to discharge, had finished, and one other, the "Daybreak," which had arrived before the "Bowdoin," had discharged at the same berth; that the master then made her fast at the end of the pier, on the westerly side of the dock, into which he afterwards hauled said schooner—a place in which he was in no appreciable danger from passing vessels, or other cause.

Fourth. That it is true that, on Saturday, the 27th of October, the master of said schooner was requested to haul said schooner to the berth aforesaid, at which he was to discharge, and he made some
10 slight effort to do so, but failed to accomplish it, because he made no skilful or persistent efforts to accomplish it, and from no other cause.

Fifth. That it is true that said master, or other person in charge of said schooner, was then requested to haul her into said berth, so as to be ready to discharge on Monday morning, and was directed to place her in the berth in which the "S. P. Smith" and the "Daybreak" had just discharged, and that berth was carefully pointed out to such person in charge; but the respondents are informed and believe, that nothing was said to the said master, or other person in charge, in relation to any stage used in discharging.

Sixth. That it is not true that the master of said schooner hauled her into the place pointed out by the wharfinger; but the truth is, he negligently hauled her into another place, and thereby caused all the damage done, as more particularly set forth below.

Seventh. That, on the side of the dock to which the "Bowdoin" was to haul, there are two berths, an upper and a lower or outer berth; the latter, designed for the use of large vessels, has been dredged out so that the descent from the upper berth to the lower is somewhat abrupt. And on the other side of the dock there are also two berths, of which in the lower the water is still deeper than in the lower berth on the side first described. All of said berths on both sides of said dock are perfectly safe for vessels to lie in, and have all been used by coal-loaded vessels for many years, and no injury has ever happened to any one of them; and if the "Bowdoin" had been hauled into the berth into which the person in charge of her was directed to place her, she would have laid there in perfect safety; but she was negligently and wrongfully placed partly in one berth and partly in another, although the master was warned at the time of the danger he was incurring, and so was caused all the damage of which complaint is made.

Eighth. That the surface of the bottom of said dock was not as alleged, hard nor uneven, except as above set forth, nor was there coal in it, in any place dangerous for vessels, nor was it in any manner dangerous for vessels managed with reasonable care.

Ninth. The respondents are informed and believe, that said
11 vessel suffered some damage; but they are not fully informed of the particulars of the same. And they deny that any part of said damage was caused by any defect in their dock, or any cause for which they are responsible.

Tenth. The respondents do not know the age of said "Bowdoin;" and they are informed and believe she was not in good condition when she came into said dock.

Eleventh. The respondents further say, that said schooner "Bowdoin" was hauled into the place in which she received the injury complained of, on the Lord's day, and the hauling her into that place was not a work of necessity or charity, and was in violation of the laws of the Commonwealth of Massachusetts; and so the respondents say, the libellants cannot recover damages for any injury received in, or in consequence of the doing of such illegal act.

Twelfth. That all and singular the premises are true.

Wherefore the respondents pray that said libel may be dismissed with costs for the respondents.

SAMUEL OAKMAN.

JOHN C. DODGE, *Proctor.*

COMMONWEALTH OF MASSACHUSETTS,
County of Suffolk, ss:

BOSTON, *January* 18, 1867.

Before me, a notary public in and for said county, personally appeared Samuel Oakman, one of the respondents in said action, and subscribed the foregoing answer, and made oath in due form that it is true.

Witness my hand and notarial seal at said Boston, the day and year above written.

[SEAL.] JOHN W. HUDSON,
Notary Public.

12 *Testimony on the part of the libellants.*

Deposition of WILLIAM H. RANDALL, sworn to before C. W. Loring, commissioner, on the 12th day of November, A. D. 1866, at Boston.

Int. 1. State your name, age, residence, and occupation?

Ans. My name is William H. Randall. I am twenty-seven years old. I reside at Portland, in the State of Maine. I am a master mariner.

Int. 2. Were you master and part owner of the schooner "Bowdoin," and did you arrive in Boston, October 23, with a cargo of coal? If yea, state her tonnage, length, and how many tons she had on board.

Ans. I was master and part owner of the schooner "Bowdoin;" I did so arrive in Boston; her tonnage is one hundred and ninety-six tons, new tonnage; she was two hundred and twenty-six, old tonnage; her length was one hundred and five feet on top; she was four months old. She had three hundred and eleven tons on board.

Int. 3. Whether or not, by your bill of lading, the coal was to be delivered at any particular wharf; if yea, what?

(Objected to unless bill of lading is put in.)

Ans. It was to be delivered at Oakman & Eldridge's wharf.

Int. 4. Please to state what occurred after your arrival, up to the time of your hauling into Oakman & Eldridge's wharf.

Ans. I went to Mr. Oakman & Eldridge's office, and notified them that I was ready to discharge. I asked Mr. Oakman if he could not discharge my vessel in the lower berth, or down below somewhere. He told me he could not, as there was about fifteen hundred tons of coal to be landed there in that berth. There was a brig discharging there at the time, and the schooner "Daybreak," and he said I should have

to wait after them. Then he said it would be my turn to discharge. I waited till Saturday noon tide; the schooner "Daybreak"
13 hauled out of the dock then that tide. I tried to get the vessel into the dock; it was a bad place to get into, there were so many vessels there, and I could not get her in that tide, the tide was against me. The wharfinger, or his foreman, came down on the wharf; he has the charge discharging there; he asked me if I was going into the dock that tide. I told him no, I couldn't get in there then, the tide had got against me. He wanted me to take her stern line up to a bark, and heave up her stern against the tide. I told him it was impossible to do it, as the tide had got a running strong then, and it was impossible to hold her up or heave her up. I told him then I should try to get into the dock the next tide. Next tide I turned out, and two vessels lay then at the end of the wharf, and one at the side of the wharf, and I could not get in then, unless I turned every one out at night, and I gave it up, and left it to the next day, which was Sunday—Sunday's tide. The last words the foreman said to me Saturday afternoon was, to be in the dock ready to discharge Monday morning, it being low water Monday morning. He told me to haul her hatch under the coal stage where the "Daybreak" had discharged her cargo. On Sunday, I started about one hour before high water to get the vessel in. I had to drop a schooner ahead that was laying at the end of the wharf where I discharged to; there were only some boys on board, and I took the liberty of doing so. I hauled my vessel into her berth where I was ordered to haul her. I sat up that night until the vessel heeled off some, and I thought that she had her bearing. Next morning, I was woke by the engineer, or the man that had the care of the engine, hoisting coal, a little after daylight. He came along. Said he, "You had better turn out, or you will get drowned out." I immediately turned out, and went on deck, and found the condition the vessel was in. I found that she was badly strained, and I went then to see what the occasion was, and I found that there was a pile of coal amidships, by the main rigging, that caused her to heel off, and I ordered two men to attend the pumps. I went to the office and notified them there what condition the vessel was in, the book-keeper as well as the foreman. I told them they had better rig their coal stage at the after hatch and lighten the vessel aft the coal pile as soon as possible. Then I started to come over to the city to call a survey on the vessel. In going up, I fell in with the book-keeper and with Mr. Ayre, the agent of the Union Sugar Refi-
14 nery, who had bought the coal. Then, when I got along to them, Mr. Ayre says to the book-keeper, "I tell the captain we will pay demurrage, if it is the custom of the port; but if it is not, we shan't." Then I asked him who was to pay for the vessel. He asked me what was the matter of the vessel. I told him I had hauled my vessel in there, and she was spoiled, and I wished him to go and look at her, —Mr. Ayre, I mean,—and he went on board and looked at her. I came to town then, and called a survey on the vessel.

(Conversation objected to.)

Int. 5. Whether or not the person who spoke to you on Saturday about hauling in attended to or superintended the discharge of your cargo?

Ans. He did, sir.

Int. 6. By whom was the coal discharged?

Ans. It was discharged by Mr. Oakman's,—that firm. I paid the bill.

Int. 7. Where did you lie from the time of your arrival up to the time

of your attempting to haul in Saturday? Was it or not a safe place? Was it or not exposed to any danger? If so, what? Did you or not suffer any damage there?

Ans. I laid at the wharf that the office sets on—Mr. Oakman & Eldridge's. It was not a safe place; it was exposed to the danger of vessels moving. I did suffer damage there. I had my boat stove, and my stern moulding stove off—a piece of it. It was done by a vessel towing out of his dock.

Int. 8. Were you or not in the "Bowdoin" from the time she was launched to when she hauled to said wharf? If yea, whether or not had she in the mean time met with any accident or sustained any damage except what you have stated?

Ans. I was in the "Bowdoin" during that time. She had not met with any.

Int. 9. State generally what damage was done to the schooner by lying in that dock?

Ans. The vessel was hogged and twisted badly, port rail was broken and hauled apart; the starboard rail was hauled apart, also the butts in her deck; the quarter rail was also hauled apart, and other damages sustained.

Int. 10. Did you or not superintend her building? How was she as to being well built, staunch, and strong? What did she cost?

Ans. I did not superintend her building. I was there for the last month. She was as well built, staunch, and strong as could be built. I don't know as I can tell exactly what she cost. She cost between nineteen and twenty thousand dollars, I should think.

Int. 11. Please to produce the bill of lading, or a true copy.

Ans. I produce a copy of it (it is marked C. W. L., A, Nov. 12, 1866, C. W. L.) by the magistrate.

And to the following cross-interrogatories propounded by John C. Dodge, proctor for the defendants:

Cross-int. 1. At what time on Sunday did you haul in?

Ans. I don't know that I can state exactly as to the time. The tide had ebbed a very little when I got into my berth; perhaps it was an half an hour's ebb.

Cross-int. 2. Do you not know what time it was when you commenced hauling in?

Ans. No, sir; I don't think I can tell you exactly. I started about an hour before high water.

Cross-int. 3. What was the weather at the time?

Ans. It was pleasant weather.

Cross-int. 4. Was there any wind?

Ans. Very little.

Cross-int. 5. Which way was it?

Ans. Well, I can't tell you which way it was exactly. It was on the northern board, though.

Cross-int. 6. You lay at the end of one of the piers of Messrs. Oakman & Eldridge's wharf from Tuesday to Sunday, did you not?

Ans. I dropped to the end of the pier at the other wharf on Saturday tide alongside the schooner "Daybreak," that had discharged in that berth I hauled into.

Cross-int. 7. Why did you not go back on Saturday to the place you started from?

Ans. Because I wanted to take advantage of the flood tide, so as to drop my vessel into the dock on the high water.

16 Cross-int. 8. Why did you not come in between the piers on Saturday?

Ans. Because the schooner "Daybreak" never got out of the dock in time enough for me to get in, before the tide turned against me.

Cross-int. 9. What time did she get out?

Ans. I can't tell you the exact time; she got out a little before high water, and if there had been no vessels there I could have got in.

Cross-int. 10. Did you make any effort to get in between the piers Saturday?

Ans. I did, sir.

Cross-int. 11. What did you do? state all.

Ans. I helped haul the "Daybreak" out in the first place. Soon as I got her out, I ran a line up to her and hauled our stern out by his. Then I ran a line up to the wharf and hauled our vessel up as far I could get it to another vessel that lay discharging there by the side. Then I put our watch-tackle on to the line, and hauled her astern all I could. I could not get astern far enough to swing our vessel's jib-boom clear of this vessel's main-boom that was discharging at the wharf, be fore the tide got against me.

Cross-int. 12. Were you ever in that dock before?

Ans. I was not to my knowledge.

Cross-int. 13. After you got into the dock on Sunday, why did you not remain there, without coming to the berth?

Ans. Because I was ordered to haul into the berth, to be ready to discharge Monday morning.

Cross-int. 14. At what time on Sunday night did you turn in?

Ans. I think it was about ten o'clock; I am not certain.

Cross-int. 15. Where were you Sunday afternoon?

Ans. I was on board my vessel.

Cross-int. 16. What were you doing there?

Ans. I was reading the Bible part of the time. I might have got a nap part of the time what I was not at work getting the vessel in.

Cross-int. 17. Did you spend the whole of the afternoon there?

Ans. I did not, sir; I was on the wharf, round the vessel, or aboard of her the whole afternoon; though I believe I did go up and get some dinner.

17 Cross-int. 18. Do you know what time your vessel grounded Sunday afternoon?

Ans. I can't tell what time she took bottom exactly.

Cross-int. 19. Did she heel either way at that low water on Sunday, after you got in?

Ans. She heeled off that tide.

Cross-int. 20. It was flood tide when you turned in Sunday night, was it not?

Ans. I couldn't say for that, whether it was flood tide or ebb tide. I think it was not low water.

Cross-int. 21. Did your vessel ground Sunday night, or Monday morning, in the same place where she grounded Sunday afternoon?

Ans. All that I can answer is this, that the lines had been made fast, and she hauled them taut. I didn't go down into the dock to examine. She had not changed her position to my knowledge. She was properly made fast.

Cross-int. 22. Can you tell within two hours at what time on Sunday you started to haul in?

Ans. I can tell within that time; it was somewheres near to one o'clock, I think, I first began to move the vessel.

Cross-int. 23. Did you put any fenders between your vessel and the wharf on Sunday, when you hauled in?

Ans. I did, sir.

Cross-int. 24. What were they, and where placed?

Ans. We had a fender, a piece of a spar I had made on purpose for a fender, at my main chain, and forward by my fore chains I had a spar that was laying in the dock, I suppose for fenders. She needed a larger one there than I had on board; the wharf was a little sweeping.

Cross-int. 25. Did you have this spar as a fender on Sunday?

Ans. I did.

Cross-int. 26. Are you sure of that?

Ans. I am.

Cross-int. 27. How far from the wharf did the fenders keep the vessel on Sunday?

Ans. Well, I should judge a foot forward and about nine inches aft. It might be fourteen inches forward.

18 Cross-int. 28. After you got into the dock, your only purpose in coming to the berth was to be ready to discharge on Monday, was it?

Ans. That is so.

Cross-int. 29. You spoke of getting your boat damaged while you were at the end of the pier. What vessel did this?

Ans. The "Charles A. Jones."

Cross-int. 30. This vessel was coming out of the dock when she did it, was she not?

Ans. She was, out of Oakman & Eldridge's dock.

Cross-int. 31. Were you on board, and in charge at the time?

Ans. I was not.

Cross-int. 32. Who was? and how do you know how the damage happened?

Ans. Mr. Stillman E. Bryant, acting as the mate of the vessel. I know the damage by what he told me, and by others who were around there.

Cross-int. 33. When you say your vessel was not safe at the end of the pier, do you mean that she was in danger from vessels coming in and out of the dock?

Ans. I do, sir; and also from vessels passing by.

Cross-int. 34. Were not your directions to place your vessel where the "Daybreak" had lain while discharging?

Ans. My directions? All the directions I had was, to place my main hatch under the coal stage, where the coal stage lay.

Cross-int. 35. Who was present at the time these directions were given, and who gave them?

Ans. They were given by the foreman; Mr. John Kirwan was present, and a man from Chelsea that I hired to help me haul my vessel into the dock, and Mr. Stillman E. Bryant.

Cross-int. 36. When were they given, and where?

Ans. They were given on Saturday afternoon, when I had given up hauling her in that afternoon, and was hauling alongside the "Daybreak;" they were given at the end of that wharf I had dropped away from.

Cross-int. 37. When did you first think your vessel was in danger, while lying at the end of the pier?

19 Ans. I thought she was in danger all along—all the time I was laying there.

Cross-int. 38. Did you keep a watch on deck at night while she lay there?

Ans. I did part of the time.

Cross-int. 39. What part of the time?

Ans. I don't know as I can tell. I watched her myself day and night. I was out several times at night, watching and tending my fenders. I did not hire any one for that purpose. With the exception of what time I was absent from the vessel, the mate can say what watch was kept then.

Cross-int. 40. Did you keep a man on deck for the purpose of watching at any time in the night while you were there?

Ans. No, sir; I did not.

Cross-int. 41. Where were the fenders placed that you got up to look after?

Ans. They were placed between our vessel and the vessels we lay alongside of; some on the outside.

Cross-int. 42. Did you lay next to the pier as you lay there?

Ans. I laid outside of a vessel until she dropped away. I think it was Thursday or Friday; and then I lay next to the pier until Saturday, when I dropped alongside the "Daybreak."

Cross-int. 43. When you moored alongside of the "Daybreak," was she between you and the pier?

Ans. I laid on the outside of her, and she lay outside of another vessel.

Cross-int. 44. When you found, as you say, you could not get in on Saturday, was there anything to prevent your hauling back to your place at the end of the other pier?

Ans. Yes, sir; there was. One reason for not hauling there was that our bows laid against the wharf, and our stern laid off, on account of other vessels at the other pier astern of us, not being a proper chance to make our vessel fast. The other reason was, to take advantage of the flood tide to drop my stern round, and to go in at high water.

(The witness afterwards corrected his answer by saying) our stern laid against the wharf, and our bows off.

Cross-int. 45. That is to say, you thought that place where you had been not so good as the one where you then were?

Ans. Yes, sir; I did.

Cross-int. 46. There was nothing to prevent your getting back, was there, if you wished to?

Ans. Nothing more than that, and that the tide had got turned against me.

Cross-int. 47. Did you ever know of a vessel being injured in lying at either of these piers, except the injury that you had by the vessel coming out of the dock?

Ans. I don't know as I ever did.

Cross-int. 48. Have you not told any one that your reason for leaving your place at pier and coming into the dock was, that you might be ready to discharge Monday morning?

Ans. I don't recollect of telling any one.

Cross-int. 49. Will you testify that you have not?

Ans. I don't know as I will; it has been so long, I cannot say whether I did or not.

Cross-int. 50. You have talked this matter over with Mr. Oakman & Eldridge, have you not?

Ans. I have.

Cross-int. 51. And with the foreman?

Ans. Yes, sir.

Cross-int. 52. Did you not tell them that the reason you came in was to be ready Monday morning to discharge?

Ans. I don't think they ever asked me why I hauled in Sunday; the question they asked me—Mr. Oakman—was, why I did'nt haul farther ahead.

Cross-int. 53. Did you ever state to them, or either of them, that you thought your vessel in danger where she lay, at the end of the pier?

Ans. I told them about my boat being stove. I don't know that I told them that she was in every particular danger. Soon after I went there, I asked them if I could not get into the dock, away from vessels that were passing there.

Cross-int. 54. In talking with them since the accident, did you ever tell them that you came in on Sunday, because you thought yourself in danger at the pier?

21 Ans. Not to my recollection.

Cross-int. 55. Did you not tell them that you came in in order to get to work Monday morning?

Ans. I can't say positively.

Cross-int. 56. Did you unload at the place where you hauled in on Sunday?

Ans. I did, sir; only they dropped the vessel ahead, after she floated, about nineteen feet.

Cross-int. 57. Did you see the stage at which the "Daybreak" was unloading, while she was unloading?

Ans. I saw it while she was unloading.

Cross-int. 58. How many times were you there while she was unloading?

Ans. I think I was'nt there at all; not aboard of her.

Cross-int. 59. There was another vessel unloaded before the "Daybreak," at the same place, was there not?

Ans. I think there was a brig partly discharged there.

Cross-int. 60. Did you not understand that, in taking out your cargo, the stage was to be placed in the same position in which it was placed to unload the "Daybreak" and the brig?

Ans. I did not, sir; nothing said about it, only that I was to haul under the stage.

Cross-int. 61. Did you not discharge with the stage in that place?

Ans. I can't tell where they placed the stage.

Cross-int. 62. Where was the coal carried that was taken out of your vessel?

(Objected to.)

Ans. The coal was wheeled from the stage, and was dumped behind that breastwork that was built out.

Cross-int. 63. Do you mean to say that you do not know whether the stage at which you discharged was in the same place as when the "Daybreak" was unloaded?

Ans. I do, sir.

22 And to the following additional interrogatory propounded by F. C. Loring for the plaintiffs:

Add. int. 1. State why you did not haul your vessel further into the dock than you did.

Ans. Because I laid just as far ahead as I was ordered to lay to discharge.

W. H. RANDALL.

Deposition of STILLMAN E. BRYANT, sworn to before C. W. Loring, commissioner, on the 12th day of November, A. D. 1866, at Boston.

Int. 1. State your age, residence, and occupation.

Ans. My name is Stillman E. Bryant; I am thirty-two years old; I reside at Machias, Maine; I follow the seas; I usually go as mate of a vessel.

Int. 2. Were you mate of schooner "Bowdoin" on her late voyage from Philadelphia to Boston, where she arrived October 22d?

Ans. I was not. I was second mate of her until she arrived here, and then I was made full mate of her.

Int. 3. Were you on board of her, on and off, up to the time when she hauled into dock? If yea, whether or not did she meet with any damage during that time? If yea, describe it, and how it happened, and at what hour of the day.

Ans. I was. She did meet with damage. The boat was stove, and her stern moulding, by a schooner coming out of the dock; it was about one o'clock in the day-time, I should judge.

Int. 4. Were you or not on board the Saturday p. m. before she was hauled into dock? Did you, or not, hear any conversation between Capt. Randall and any other person at that time? If yea, state who he was, and all that was said by them.

Ans. I was on board the Saturday p. m. before she hauled into dock. I did hear a conversation between the wharfinger, or the foreman of the wharves there. Says he: You can't get in this tide, captain; you will have to haul in to-morrow, so as to be ready to work on Monday morning. He told him to haul his main hatch abreast of the staging—the discharging staging.

Int. 5. Did you or not help to haul her into dock on Sunday? Whether or not she was apparently placed in a safe and proper position, and as far up the dock as she should be, and properly made fast?

Ans. I did help haul her in on Sunday. I thought she was placed in apparently a safe and proper position, and as far up the dock as she should be, and properly made fast.

Int. 6. Whether or not the main hatch was placed abreast of the stage?

Ans. It was, sir.

And to the following cross-interrogatories propounded by John C. Dodge, proctor for the defendants:

Cross-int. 1. At what time of day was this conversation?

Ans. Saturday afternoon; I don't know exactly what time. It was after high water.

Cross-int. 2. Can you not state within an hour what time it was?

Ans. I can; it was between two and three o'clock, I should think.

Cross-int. 3. Where was it?

Ans. The captain was on the forecastle, and this agent was away on the wharf.

Cross-int. 4. What was the name of the man with whom this talk was?

Ans. He was called Captain Coleman; that was all I know.

Cross-int. 5. Had you a conversation with Capt. Coleman at a late hour that afternoon?

Ans. I had not.

Cross-int. 6. Did you see him that afternoon after the conversation?

Ans. I did not, sir.

Cross-int. 7. Had you talk with him about the place where the vessel was to be discharged, at any other time, before or after this conversation?

Ans. I did.

24 Cross-int. 8. When was this?

Ans. Saturday morning.

Cross-int. 9. Where was it?

Ans. On the dock opposite to the one where we were going to haul in.

Cross-int. 10. Did he not point out to you the place where your vessel was to discharge?

Ans. He pointed across to the staging, and said, our main hatch wanted to be abreast that staging.

Cross-int. 11. The "Daybreak" was there, was she not?

Ans. No, she was not; she was out in the lower berth.

Cross-int. 12. And this was Saturday morning?

Ans. Saturday morning, sir.

Cross-int. 13. At what time?

Ans. I don't know what time it was; it was between nine and ten o'clock, I guess.

Cross-int. 14. How far were you from the place where you discharged, when this conversation took place?

Ans. I don't know.

Cross-int. 15. State as nearly as you can.

Ans. I should say about sixty yards.

Cross-int. 16. Did you not tell your captain that he ought to haul ahead further?

Ans. I did not.

Cross-int. 17. Have you not said you did?

Ans. No, sir.

Cross-int. 18. Did you not tell the foreman, or engineer, on the Oakman & Eldridge's wharfs, that you had so told him, or words to that effect?

Ans. I did not.

Cross-int. 19. Were you requested, before your boat was stove, to remove her out of the way so that the vessel might pass?

Ans. Yes, sir.

Cross int. 20. And did you reply that you would risk her?

Ans. I did not.

Cross-int. 21. What did you reply?

25 Ans. I was forward at the time, slacking ahead as fast as I could get the vessel. I ran aft, to let fall the davit-tackle fall, but the steamer towed so fast that she stove her. I replied aye, aye.

Cross-int. 22. Was that all?

Ans. That was all.

STILLMAN E. BRYANT.

Deposition of JOHN CURRER, sworn to before C. W. Loring, commissioner, on the 12th day of November, A. D. 1866, at Boston.

Int. 1. Please to state your age, residence, and occupation.

Ans. I am forty-two years old; I reside at Chelsea; I am a mariner.

Int. 2. Were you or not on board the schooner "Bowdoin," on the Saturday p. m. before she hauled into Oakman & Eldridge's dock on Sunday? If yea, how came you to be there? Did you or not hear any conversation between Capt. Randall and any other person at that time? If yea, state who he was, and all that was said by them.

Ans. I was on board of her; I was there by the captain's orders. After we had tried to get the vessel in, and after the tide had set down, so that we couldn't get her in, I heard a conversation between the cap-

tain and this man—this stevedore—whatever he was. He asked the captain if he couldn't get in. The captain told him no, not that tide. He says, when are you going to get in? He replied, I will try and get in the next tide. Then this foreman says, You will get in so far that we can go to work on you Monday morning. Then he said, if he couldn't get in with the help he had, he would put on a tug-boat. He told the captain to place his vessel under the stage.

Int. 3. Was it or not the same person who directed or superintended the discharge of the cargo?

Ans. Yes, sir.

JOHN CURRER.

26 *Commissioner's report.*

On the 5th day of October, A. D. 1867, the commissioner's report was opened and filed in court, and is as follows, viz:

District court of the United States, Massachusetts district, ss. In admiralty.

CHARLES SAWYER ET ALS., LIBELLANTS,
vs.
SAMUEL OAKMAN ET AL., RESPONDENTS.

In pursuance of an order passed by this honorable court, in the above-entitled cause, dated April 10, A. D. 1867, and which is hereto annexed, I have met the said parties with their counsel at various times, and examined the libellants' vouchers and claims, and heard the proofs and evidence produced by said parties respectively, and the arguments of their counsel, and, having duly considered the same, I report to the court upon the matters referred to me, as follows:

I find that the said Charles Sawyer, who is the owner of one-eighth of the said schooner "Bowdoin," and who was and is the managing owner, residing in Portland, Maine, upon being informed of the disaster to her at the wharf of the respondents, came to Boston from Portland, and employed several skilful and competent men to make surveys of the schooner, who examined her condition from time to time, and made their reports, stating the condition of the vessel, and recommending what in their judgment was necessary and proper to be done to her, and stating her condition after the repairs had been done and completed.

For the services of these surveyors, seven in number, the libellants paid the sum of one hundred and thirty-five dollars ($135 00.)

For this item claimed by the libellants, the respondents contended they were not chargeable. But I find this to be a proper charge, and have allowed it.

27 The said Sawyer, acting as managing owner, in coming to Boston to look after the vessel as before stated, incurred certain personal expenses, hereinafter stated, which, together with the sum of sixty dollars for twelve days' services, at $5 00 per day, in overseeing the vessel and her repairs, he claims as part of the libellants' damages.

His bill is as follows:

Schooner "Bowdoin" to Charles Sawyer,	DR.
To travelling expenses	$13 00
" board bill	36 00
" services	60 00
	$109 00

To the allowance of this claim, the respondents objected. And deeming the said items for travel and board to be proper items of damage, I have allowed the same. But I consider the said charge of $60 00 for twelve days' services not to be a proper item of assessment against the respondents, because I have otherwise allowed what in my judgment are sufficient charges for the services of other parties, in the nature of overseeing and superintending.

Said Sawyer, in behalf of the libellants, employed Messrs. Bradford & Folger, "adjusters of marine losses, insurance brokers, and notaries public," whose services, as rendered and paid for by Mr. Sawyer, appear in their bill, which is as follows:

"*Charles Sawyer, esq., to Bradford & Folger,* DR.

"For noting protest in case of schooner "Bowdoin," consultation and advice to captain and owners of said vessel, and copy of note furnished December 15, 1866, $15 00."

This charge I have not allowed. Said protest was not extended.

The libellants employed (through Mr. Sawyer) Messrs. Swett & Kilborn, of Boston, shipwrights and caulkers, to make and cause to be made the necessary repairs to the vessel after the accident. The whole amount of their bill for services, labor, materials, commissions and payments made by them is $4,918 26, and this has been paid to
28 them by the libellants. Some portions of said bill, however, were not claimed by the libellants, as chargeable to the respondent. In the statement of the damages assessed by me, and hereto annexed, the items of said bill, as allowed by me, are indicated, making the total amount for and on account of the repairs done to the vessel, and chargeable to the respondents, forty-six hundred seventy-one dollars and three cents, $4,671 03.

And I find upon the evidence that the schooner was restored by the said repairs put upon her, so as to be as strong as she was before the accident, and that she was thereby rendered as valuable to her owners for their own use and employment as she was before.

It appeared, however, upon the evidence that there still remains in her wales some slight defect, not enough to be observed upon an ordinary view, and only to be discovered by a critical examination, and which indicates a slight opening in some of the butts of the side timbers, produced chiefly, if not wholly, by the hogging and twisting, and not fully restored by the repairs.

I am of opinion, that in consequence of this fact, and of the fact being known that the vessel had met with this disaster, she would not sell for so much as she would have done if said disaster had not occurred. For the purposes of sale, therefore, I am of opinion, that her value has been diminished for the reasons above stated, in consequence of said disaster, notwithstanding the sufficiency of the repairs, for the purposes of use by the owners as before stated.

It is, however, very difficult to estimate such depreciation, and it must necessarily be, to a very great extent, a matter of conjecture. From the best judgment I am able to form upon all the evidence in the case relating to this point, and assuming such depreciation in her market value to be a proper subject of assessment of damages in this case, of which I entertain great doubt, and therefore submit the question to the court, I allow the sum of one thousand dollars, as and for the total amount of said depreciation, and assess the same accordingly, subject

to the opinion of the court. The evidence upon which this finding as to said market value rests was that of experts, and was admitted by me de bene under objection of the respondents.

And I have stated the various items of damage, as found and assessed by me in the account hereto annexed, amounting in the aggregate to five thousand two hundred and forty dollars and three
29 cents, exclusive of said last-mentioned item, or including the same, to the sum of six thousand two hundred and forty dollars and three cents. I have also stated an interest account, computing interest on the amounts paid by the libellants on account of the repairs as assessed, from the dates of the payments, and on other items allowed from such times as in my judgment they ought to draw interest, to the date of this report, viz: October 1, 1867.

CHARLES C. NUTTER,
Commissioner.

BOSTON, *October* 1, 1867.

Commissioners' fees, $400 00—paid by libellants.

30 I. *Assessment of damages.—Swett & Kilborn's bill on their own account.*

1.	To 4 bbls. pitch, 6½	$26 00
2.	" 1,090 lbs. spun oakum, 18	196 20
3.	" 3 pitch mops, 50	1 50
4.	" 286 ft. oak plank, 8	22 88
5.	" 700 oak wedges, $4	28 00
6.	" 6 lbs. copper nails, 35	2 10
7.	" 54 lbs. comp. spikes, 35	18 90
8.	" 4,958 ft. oak, 8	396 64
9.	" 15 hack. knees, 5½	82 50
10.	" 3,250 locust treenails, 38	123 00
11.	" 4,900 treenail wedges, 1¼	6 13
12.	" 496 ft. w. pine, 6	29 76
13.	" 215 days caulkers' work, 4 50	967 50
14.	" 240½ " carpenters' " 4 50	1,082 25
15.	" 109¾ " fasteners' " 4 00	437 00
16.	" com'ns on labor	248 68
17.	" trucking sundry times	25 00
18.	" 37 lbs. scupper lead, 15	5 35
19.	" 110 " comp. bolts, 32	35 20
20.	" scraping bottom	25 00
21.	" paid sawing and planing	2 25
22.	" cleaning deck and piling plank	12 00
		$3,774 54
	From which deduct work on chain plates, 5 00	
	" " " 7 50	
		12 50
	Amount carried forward	$3,762 04

31	Amount brought over	$3,762 04

II. *Paid by Sweet & Kilburn on acc't of repairs and to be charged to respondents.*

23.	Paid riggers' bill	$48 91
24.	" joiners' "	82 25
25.	" painters' "	77 46
26.	" towing	7 00
27.	" "	6 00
28.	" dry-dock bill	165 00
29.	" bill of paint	144 90
30.	" blacksmith's bill	377 47
		$4,671 03
31.	Bill of Sawyer (travel and board)	49 00
32.	P'd Geo. Frazer, surveying 20 00	
	" " superintending 25 00	
		45 00
33.	" other surveyers	115 00
		$4,880 03
34.	Demurrage 12 days, at $30	360 00
		$5,240 03
35.	Estimated depreciation in value as for sale, as stated in report	1,000 00
		$6,240 03

32 *Interest account.—On payments on Sweet & Kilborn's bill.*

1.	Nov. 30, 1866, $1,717 77	$85 89
2.	Dec. 7, " 663 00	32 52
3.	" 10, " 375 00	18 13
4.	" 14, " 87 00	4 14
5.	Jan. 16, 1867, 875 00	37 19
6.	Feb. 28, " 812 50	28 71
7.	Mar. 20, " 245 76	7 79
	$4,786 03	
	(This includes the am't allowed on Swett & Kilborn's bill, $4,671 03, and am't p'd surveyors, $115=4,786 03.)	
8.	On Sawyer's bill, $49, from Nov. 15, 1866	2 57
9.	" Frazer's " $45, " " "	2 36
10.	" demurrage, $360, " Nov. 9, "	19 26
		$238 56
	Total, including last item of 1,000	$6,478 59
	Or	1,000 00
	Total, excluding last item of $1,000	$5,478 59

CHARLES C. NUTTER,
Commissioner.

District court of the United States, Massachusetts district, ss. In admiralty.

IN CAUSE: CHARLES SAWYER ET AL., libellants,
vs.
SAMUEL OAKMAN ET AL., RESPONDENTS.

APRIL 10TH, A. D. 1867.

It is ordered by the court that Charles C. Nutter, esquire, be appointed a commissioner to hear the parties and ascertain and report to the court the amount of damages sustained by the libellants in said cause.

Attest:

S. E. SPRAGUE, *Clerk.*

33 On the 10th day of October, A. D. 1867, the following exceptions of respondents to assessor's report were filed in court, viz:

District court of the United States, district of Massachusetts.

SAWYER
vs.
OAKMAN.

And now the respondent comes and objects to the acceptance of the report of the assessors, on the ground that the same is erroneous inasmuch as it allows one hundred and thirty-five dollars, alleged to have been paid to seven persons for making surveys of the schooner "Bowdoin," before and after she was repaired, and the sum of one thousand dollars supposed diminution in the value of said vessel, for the purposes of sale.

JOHN C. DODGE,
Proctor for Respondents.

On the 28th day of October, A. D. 1867, the following exceptions of libellants to commissioner's report were filed in court, viz:

U. S. district court, Massachusetts district. In admiralty.

SAWYER ET AL.
vs.
OAKMAN ET AL.

And now the libellants come and make the following exceptions to the commissioner's report, filed in the above-entitled case:

1st exception. For that the said commissioner in his said report did not allow to the libellants the sum of sixty dollars for the services of Charles Sawyer, the manging owner, whereas said sum should have been allowed.

2d exception. For that the said commissioner, in his said report, did not allow to the libellants the sum of fifteen dollars, paid by them to Bradford & Folger, for noting protest and for other services, whereas said sum of fifteen dollars should have been allowed.

F. C. LORING &
JOHN LATHROP,
For Libellants.

34 This libel was entered at a special district court, held on the 9th day of November, A. D. 1866, and thence was continued from time to time to this 3d day of January, A. D. 1868. And now, after a full hearing of the cause, upon the facts proved and the arguments of counsel, and mature deliberation thereon had, the court doth order, adjudge, and decree that the report of the commissioner be affirmed for the lesser sum allowed by him, and that the libellants' exceptions to the report of the commissioner be overruled, and that the respondent's exceptions to the allowance of surveyor's fees be overruled, and their exceptions to the allowance of the sum of one thousand dollars for depreciation in the market value of the vessel be sustained; and that the said libellants recover against the said respondent the sum of five thousand two hundred and forty dollars and three cents, together with interest on the several items from the several times stated in the commissioner's report to the date of this decree, amounting to three hundred and eighteen dollars and eighty-nine cents.

The whole amounting to the sum of five thousand five hundred and fifty-eight dollars and ninety-two cents; and also that said libellants recover against said respondents their costs of suit, taxed at five hundred and ninety-four dollars and forty-nine cents.

On the 8th day of January, A. D. 1868, the following respondents' prayer for an appeal was filed in court, viz:

District court, district of Massachusetts.

CHARLES SAWYER ET AL.
vs.
SAMUEL OAKMAN ET AL.

In the above-named case, a decree having been made in favor of the libellants, the respondents claim an appeal, and pray that the same may be allowed.

By their proctor,

JOHN C. DODGE.

35 On the 9th day of January, A. D. 1868, the following appeal of libellants was filed in court, viz:

United States district court, Massachusetts district.

CHARLES SAWYER ET AL.
vs.
SAMUEL OAKMAN ET AL.

And now the libellants claim an appeal to the circuit court of the United States from so much of the decree of said district court as overrules the libellants' exceptions to the commissioner's report, and to so much of said decree as affirms the respondents' exceptions to said commissioner's report, and prays that their appeal may be allowed.

F. C. LORING &
JOHN LATHROP,
Proctors for Libellants.

And thereupon the said appeals were allowed by the court.

I, S. E. Sprague, clerk of the district court of the United States for

the district of Massachusetts, hereby certify that the foregoing is a transcript of the record of said court in said cause, made up pursuant to admiralty rule No. 53.

In witness whereof I have hereunto subscribed my name, and affixed the seal of the said court, this eighth day of May, A. D. 1868.

[L. S.] S. E. SPRAGUE, *Clerk.*

36 Deposition of WILLIAM H. RANDALL, a witness for libellants, taken before Charles F. Walcott, notary public, January 2, A. D. 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. State your name, and whether you have before testified in this case.

Ans. William H. Randall; I have.

Int. 2. Were you or not master of the schooner "Bowdoin," in October, 1866, and are you or not now master of her?

Ans. In October, 1866, I was master of her; I am not, at present.

(The following questions are put de bene, the libellants not waiving any of their objections to any of the direct interrogatories or answers thereto contained in the deposition of Asa G. Haskell.)

Int. 3. (De bene.) State whether or not you had any conversation in October, 1866, with Captain Asa G. Haskell, while you were hauling your vessel into your berth at Oakman & Eldridge's wharf, at Charlestown, or at any other time and place.

Ans. I did not.

Int. 4. (De bene.) State whether or not said Haskell told you that you must haul your vessel up the dock so far as you could go, or words to that effect.

Ans. He did not, sir.

Int. 5. (De bene.) State whether or not you asked said Haskell whether he knew anything about the berth where you were going, or words to that effect.

Ans. No, sir; I did not.

Int. 6. (De bene.) Did or did not said Haskell give you any reason why you should go as far up as you could?

Ans. He did not, sir.

Int. 7. Did you haul your vessel 'round the stern of any other vessel; and if so, how long did it take you?

Ans. I did sir; there was a vessel laid at the end that I hauled
37 'round; perhaps I was twenty minutes getting by her stern, I can't tell exactly; not over that.

Int. 8. How long were you from the time you first began to move your vessel 'till you got to your berth?

Ans. I should judge about an hour, sir.

Cross-examination.

Cross-interrogatories by John C. Dodge, esq., in behalf of libellees, and answers of the witness thereof.

Cross-int. 1. When did you cease to be master of the "Bowdoin"?

Ans. I don't know as I could tell you exactly the date; I think it was in the last part of September last.

Cross-int. 2. Who is now master of her?

Ans. Captain Joseph Hill.

Cross-int. 3. Of what vessel, if any, are you now master?

Ans. Not any, sir.

Cross-int. 4. In what business have you been engaged since you left the "Bowdoin"?

Ans. Well, I went down east on a visit to my folks, and I joined her in Providence again as mate of her; went on to New York in her from there; there she was chartered to go to the Island of Porto Rico, to the port of Maraguez; I went out in her as mate, and back to New York, and now I am going back to New York to take charge of her as master.

Cross-int. 5. Are you a part owner of her; and if so, how much of her do you own?

Ans. I am; I own one-sixteenth.

Cross-int. 6. Are any of the other owners relatives of yours, or connected with you by marriage?

Ans. No, sir; they are not.

Cross-int. 7. Were you ever master of any vessel before you were master of the "Bowdoin"?

(Objected to as not relating to any matter inquired of in the direct examination.)

Ans. Yes, sir.

Cross-int. 8. State what vessel, and how long.

Ans. The first one was the schooner "Exchange;" I should
38 judge I was in her fourteen months. The schooner "Olive Elizabeth;" I was about eighteen months in her.

Cross-int. 9. How large were those vessels?

Ans. I don't recollect the tonnage of the "Exchange;" the "Olive Elizabeth" was of about 130 tons, if I recollect right—about that.

Cross-int. 10. Was the "Exchange" larger or smaller than the "Olive Elizabeth?"

Ans. She was a little smaller, sir. I guess the tonnage of the "Exchange" was about 114; I can't tell exactly.

Cross-int. 11. What was the name of the vessel around whose stern you hauled?

Ans. I can't tell you, sir; I don't remember.

Cross-int. 12. What was the name of her master?

Ans. That I can't tell you sir.

Cross-int. 13. Do you know Captain Asa G. Haskell?

Ans. No, sir; I do not.

Cross-int. 14. Do you know the captain of the vessel around whose stern you hauled?

Ans. I do not, sir; I don't know a man who laid there at the dock.

Cross-int. 15. Did the master, or any one from on board the vessel around whose stern you hauled, come on board your vessel to help you haul in?

Ans. There was a man stepped aboard the vessel; he might have been there from eight to ten minutes. Whether he was captain, or what he was, I don't know. He never spoke to me, or I to him, that I know of.

Cross-int. 16. Was there but one man that came aboard your vessel from any other vessel, to help you haul in?

Ans. Not to my knowledge; I think there was not.

Cross-int. 17. How long had this vessel, from which the man came on board, been there, or at the end of the wharf, or near you?

Ans. I don't know, sir.

39 *Direct examination resumed.*

Interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 9. (De bene.) State whether or not the conversations inquired about in the 3d, 4th, 5th, and 6th direct interrogatories were had by you with any one while hauling your vessel to her berth, or at any other time.

Ans. No, sir; I did not.

Int. 10. (De bene.) Whether or not did any one make the remarks inquired about in the 4th, 5th, and 6th direct interrogatories, or any of them, to you, or in your presence, while hauling your vessel to her berth, or at any other time?

Ans. No, sir; they did not. No one made any such remarks.

W. H. RANDALL.

(The witness stated in answer to inquiries by the magistrate, that he travelled from the city of New York to Boston, Mass., for the purpose of giving this deposition, and for no other purpose or business whatsoever.)

Deposition of JOHN A. PAINE, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, March 17, and 18, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witnesses thereto.

Int. 1. State your name, age, residence, and occupation.

Ans. John A. Paine; sixty-two years of age; residence is Somerville; occupation is port warden of Boston; I have been port warden for the last ten years.

Int. 2. If you are or have been a mariner, state how long, and in what capacities.

Ans. I was a mariner for thirty-six years; twenty-one years master, the other part of the time before the mast, second mate, and mate.

40 Int. 3. In October and November, 1866, did you or not see the schooner "Bowdoin" at Oakman & Eldridge's wharf, Charlestown? if so, state when the first time, and when afterwards; describe the condition of said vessel, and all that you did at each time you saw said vessel.

Ans. I did so see the schooner "Bowdoin," October 29th, about eleven o'clock in the day, I think it was, I saw her the first time; I think I was to her the next day, the 30th. I was called there to see the position of the vessel, by the request of J. W. Hannum and the master, Captain Randall—William Randall. We went aboard the vessel—there was another surveyor with me, Captain Jacob Pierce—I am talking of the first time—and found the vessel on the ground, being about a quarter to a third flood tide; the forward part of her appeared to be nearly level, the after part of her, from her main hatch aft, twisted over to port. We found the rails broken on the larboard side, I think; the starboard side, I think, was drawn open. The deck drawn from the combings of the main hatch about half an inch; the scarfs of the plank-shears and butts of the deck drawn open; the mainmast head twisted out of line from two to three feet, to appearance, as nigh as we could judge on the dock. We sounded on the port quarter eight feet, about five feet amidships on the port side, about four feet at the bows. We saw a pile of

coal that had broke away from the bin—that was supposed to have broke away from the bin—in the dock, abreast of the main rigging, on the starboard side. Seeing the position the vessel was in, Mr. Oakman being present, we asked him how much coal he thought he could get out between then and night; his reply was, he could get out about fifty tons; he would put the men on as soon as they came from dinner. We advised the captain to take coal out of the after hatch, (conversation with the captain objected to), and put it on the starboard side, forward of the main hatch, and to discharge out of the main hatch, as it was larger, and they could work much better, and when the tide rose, at high water, to haul the vessel about nineteen feet further ahead—that would be as far as he could get—so as to bring the pile of coal that was under the main rigging under the counter, which would relieve the vessel in some measure. I think that was all that we done at that time, if my memory serves me, it has been so long. The next day that we were there, I think it was the 30th, we
41 found the vessel hauled ahead, as recommended by us, and the cargo being discharged. We got a ladder, and went down in the dock, being low water, took an oar to ascertain about this coal. We found the vessel resting on the coal some, but not heavily, to appearance. I couldn't press the oar between the vessel and the coal, she was pressing on it that much, where it touched her bottom—the vessel lying in a better position than she was before. We recommended that they work the coal from the main hatch aft out of the vessel forward, to relieve the vessel. (Conversation objected to.) November the 2d, held another survey; found the cargo all out; examined the hold of the vessel; found two knees on the starboard side broken in the throat, and two on the larboard side abreast of the main hatch—near that; there may have been one forward of the main hatch, and one abreast, on the port side; two abaft the main hatch, on the port side, split; the rider on the keelson drawn open; the flat of the floor, on the starboard side, crowned up, about four inches out of the line, supposed where she rested on the coal, showing that the vessel was heavily strained. We recommended that the split and broken knees be taken out, the oakum reefed out of the butts in her deck, and the sides and midships, and the vessel put in dock for further examination.

(Recommendations objected to.)

On the 5th, I think it was, held another survey of the bottom of the dock, being low water, where the vessel lay when she received the injury. We found eight feet at the stern, in the keel track; five feet amidships, and four feet at the bows; the pile of coal partially dry, next the wharf; a space about eight feet long, where the vessel rested, was about six inches higher than the keel track, where the coal had run into the keel track, showing an uneven surface. That is all the survey until I get over to the dock. We also surveyed her, on the 5th, in Simpson's dock.

Int. 4. State whether or not the vessel was hogged by the injury you you have stated.

Ans. She was.

Int. 5. Have you or not a memorandum of the soundings made by you on the 29th of October? and if so, please look at the same, and then state what said soundings were.

Ans. I have, but I have stated it once before; this is my memo-
42 randum made at the time; this is what I wrote off, when I was there. (Witness continued examining memorandum.) Being about one-third flood tide, twelve feet at the stern, eight feet at the main rigging, port side; five feet at the bows—all on the port side; starboard side, about one foot over the pile of coal, abreast of the main rigging; these

were the soundings made the first day; that is all the soundings, I think that we took the first day.

Int. 6. What amount of coal was there in the dock, according to your judgment?

(Objected to.)

Ans. As near as I could judge, from fifteen to twenty tons; it was under water I couldn't tell.

Int. 7. From what you could see of the pile, the day you say part was out of the water, how much should you judge there was then in the dock?

Ans. Well, I should judge there was from fifteen to twenty tons of coal the day I was there in the boat. A pile of coal spread out, pressed down. I couldn't tell, but I should judge from fifteen to twenty tons. A vessel laying on it spreads it off so that you couldn't form so good an estimate.

Int. 8. What was the position of the vessel, the second day, when you tried to shove an oar between the coal and the vessel; was she upright, or on her side?

Ans. She was upright as far as she could be on account of the twist; the forward part was upright.

Int. 9. Was what lean there was in the after part to port or to starboard?

Ans. The lean was to port, in the after part.

Int. 10. How near the keel of the vessel did you get your oar, when you tried to shove it between the vessel and the coal?

Ans. I should think about eight feet; I mean from where the keel was to where the oar touched, I should think, was from six to eight feet; I should think six feet, certainly.

Int. 11. When you went in the boat, and sounded as you have described, who were with you in the boat, and what did each one do?

Ans. There was Captain David Elliott, Mr. Frazer, Mr. Swett, and I don't recollect who the other one was. I sounded the bottom with
43 the oar; Mr. Swett measured the depth; Mr. Frazer he made the memorandum. I think Captain Elliott helped me steady the boat, pushed her along. I am not positive about that.

Int. 12. At this time was any vessel in the berth?

Ans. There was not; the dock was entirely clear, except the "Bowdoin." She lay down at the end of the wharf, hauled out of the berth where she lay. I am talking about November 5th; I think it was the 5th, in the afternoon. My memory isn't good enough to recollect.

Int. 13. Did you, or not, make soundings in the dock, from a boat, more than once?

Ans. I did not.

Int. 14. At the time of the soundings from the boat, how did you ascertain where the stern part of the vessel had been?

Ans. I had made a mark on the coal bin; I had cut a place on the coal bin and on the cap sill of the wharf where the bows and stern of the vessel had laid.

Int. 15. When were these cuts made?

Ans. The bows was made the first day, and I think the stern was made just at night of that day. I made these marks where she lay when she was injured—the first day I saw her.

Int. 16. What, if anything, was, in your judgment, the cause of the injury to the said vessel?

(Objected to.)

Ans. I think the pile of coal was the cause of her injury.

Int. 17. Whether or not, in your judgment, was said dock, with said coal in it, a fit and proper place for a vessel to lie in?

(Objected to.)

Ans. It was not, for a vessel of that class.

Int. 18. About what part of the vessel was the pile of coal, when she was hauled ahead, as she was the second day you saw her?

Ans. I should judge about twenty to twenty-five feet from the stern post.

Int. 19. What kind of a vessel was the "Bowdoin" in regard to build and strength?

(Objected to.)

Ans. She was a very good vessel; she was what we term an A 1 vessel, about four months old.

44 Int. 20. Please examine the paper now shown you, marked "Exhibit G, C. F. W.," and state what it is, and whether the statements therein contained are true?

(The paper here shown to the witness is hereto annexed, marked "Exhibit G, C. F. W."

Objected to, and exhibit objected to.

Mr. Dodge, counsel for respondents and appellants, examined the exhibit.)

Ans. That's the survey that we made; the first, second, and third, made by Captain Pierce and myself; that is all correct, if my memory serves me.

Int. 21. Is or not the said paper signed by you?

Ans. It is; (pointing to the signature) that is my signature.

Int. 22. Please examine the paper now shown you, and marked "Exhibit H, C. F. W.," and state what it is, and whether the statements therein contained are true?

(The paper here shown to the witness is hereto annexed, marked "Exhibit H, C. F. W."

Objected to, and exhibit objected to.)

Ans. It is a survey made by myself and others; the only thing I see out of the way in it is, as I said before, the twenty-five tons; I think that is too large. This is the survey made on the 1st, 2d, 5th, and 16th of November.

Cross-examination.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. How do you know how old the "Bowdoin" was?

Ans. I don't know, only by the looks of the vessel, and what the captain told me, and owner. I should judge her to be a new vessel; everything indicated it.

Cross-int. 2. Can you judge of the age of a vessel by looking at her, so as to swear to it?

Ans. I can tell within a few months, I think.

Cross-int. 3. On the first day you saw this vessel, you sounded the depth of water on her port side; how much water did you find at the place of measurement farthest forward?

45 Ans. Five feet.

Cross-int. 4. Where on the vessel was this measurement?

Ans. It was about abreast of the cat-head, or between that and the bow—forward; I should think it was about abreast of the cat-head.

Cross-int. 5. You made no measurement forward of that, did you?

Ans. I did not.

Cross-int. 6. Where else did you measure?

Ans. The next measure that we took was at the after part of the main rigging.

Cross-int. 7. How far from the stern was this?

Ans. I don't exactly know how long the vessel was; I think about fifty feet. I should think a vessel of that class would be about one hundred and ten feet long; I don't know her length.

Cross-int. 8. Is this the place you call the port quarter?

Ans. Main rigging? No, sir, it is not; the main rigging is amidships.

Cross-int. 9. Did you then make no sounding between the bows and the main rigging?

Ans. We sounded all the way along, with the oar or a pole we had, but didn't make any note, as the bottom was rising gradually from the main rigging forward, where the vessel had pressed it out.

Cross-int. 10. Was any one with you on the survey on the 29th or 30th besides Captain Pierce?

Ans. The 29th Mr. Swett was there, but he wasn't in the survey, that I knew of. I think he was there, but am not positive.

Cross-int. 11. Do you mean to say that you call the after part of the main rigging on a vessel amidships?

Ans. No, sir, not the after part of the main rigging; that ain't amidships; no, sir—usually the forward shroud of the main rigging is, in most vessels, in the centre—amidships; the spread of the rigging aft from the forward shroud, in such a vessel as that, would be ten feet, certain; five shrouds, about two foot apart.

Cross-int. 12. Do you then mean the centre of a vessel, by the term amidships?

Ans. Well, it is near the center; as a seafaring man, I speak in general terms; a nautical man would call it amidships, ten feet forward of the center, and ten feet abaft it.

46 Cross-int. 13. What do you call the port quarter?

Ans. The port quarter is anywhere from the taffrail rail to ten feet forward; but at this survey the depth of water was taken within two foot of the taffrail rail—that's the rail that goes across the stern.

Cross-int. 14. Was the sounding amidships made abaft the topmast backstays?

Ans. It was made right abreast the topmast backstays: I stood right abreast the topmast backstays, on the rail; it was made between the topmast back stay and the after shroud.

Cross int. 15. You said you measured over the "port quarter," and found eight feet of water; now tell me exactly where this measurement was made.

Ans. Port quarter, eight feet? No, sir, I said twelve feet; port quarter, twelve feet; if I didn't, I meant to; I think I said twelve feet; I said eight feet by the main rigging.

Cross-int. 16. Do you swear that you have not testified that you found eight feet on the port quarter, five feet amidships, and four feet forward?

Ans. Not on first survey, I didn't.

Cross-int. 17. Have you not so sworn, since you have been giving this deposition?

Ans. I think not; no.

Cross-int. 18. Did you make soundings over the port side at any time after the first survey; if yes, when, and how many did you make?

Ans. I think we made—in my survey when the vessel was hauled ahead—I think that we made other soundings, but I am not positive; we didn't make other soundings until the vessel was hauled ahead; and I'm not positive whether we made other soundings after that or not.

At 5 o'clock p. m., the hearing was adjourned until 11 a. m., March 18, at the same place.

TUESDAY. *March* 18.

The hearing was resumed, pursuant to adjournment; the counsel for the respective parties and the witness being present.

(After the hearing was resumed on adjournment, the witness stated that he desired to correct some statements previously made by him, and testified as follows:) In my statement of the soundings the first
47 day, it should read, twelve at the stern or port quarter; eight at the main rigging, and five at the bows; also, the survey of the depth of water November 2d, instead of the 5th, the day I went in the boat—the water in the keel track; I think I testified it was November the 5th, but it should have been November the 2d.

Cross-int. 19. What did you testify yesterday these soundings, made on the first day you saw the vessel, were?

(Objected to.)

Ans. I think I testified, yesterday, eight, five, and four, I think it was—eight, aft; five, amidships; and four, forward.

Cross-int. 20. Did you not, yesterday, say you had not testified as stated in your last answer?

Ans. I believe I did—I was mistaken. I got the two depths of water confounded.

Cross-int. 21. What two depths did you get confounded?

Ans. The depths taken on the 29th of October, and the depths taken on the 2d of November. One was taken on the outside of the vessel, where she lay the first time, and the other was taken in the keel track, where she lay when she received her injury; but it was taken after she was hauled out of the berth. Both measurements were taken where the vessel received her injury.

Cross-int. 22. What were the depths taken on the second of November? Repeat them.

Ans. The depth aft—mean low water—was eight feet where her stern lay; five feet, amidships; and four feet at the bows.

Cross int. 23. You testified in the district court, did you not?

Ans. I did, before Judge Lowell.

Croos-int. 24. Did you not there say that you found the eight feet of water on the port side, about twenty-five feet from the stern?

Ans. I couldn't say; it has gone from my mind entirely.

Cross-int. 25. When you measured in the keel track, did you take the depth of the water as you then found it?

Ans. I measured the depth of water with the oar, and Mr. Swett measured the number of feet, and gave it to Mr. Frazer. I took it as I found it that day.

Cross-int. 26. What do you then mean when you say that was the depth at mean low water?

48 Ans. I mean that we were there at the time of day the almanac gave as low water. We waited till the tide got done ebbing, as we supposed.

Cross-int. 27. What time of day was it?

Ans. I think we went there at three, and stayed till half-past four. I am not positive on that.

Cross-int. 28. On the second examination of the vessel, did anybody but you try to put the oar down?

Ans. Captain Pierce was in the dock first. Mr. Oakman was down in the dock with him. Captain Pierce put the oar down under the vessel's bottom. When he came up the ladder from the dock, I went down and tried the bottom with the oar, and I think that Mr. Oakman tried it with me. He stood by me, but I wouldn't swear whether he tried it or not. Captain Pierce and I tried it.

Cross-int. 29. Are you sure of what you say in relation to Captain Pierce's trying it?

Ans. I saw him with the oar, and trying to put it under the bottom.

Cross-int. 30. Do you remember what you said in the district court about that?

Ans. I do not.

Cross-int. 31. How many feet did you put the oar into the water before you came to the place where you could not put it down any further?

Ans. I could not answer that question correctly. I should think two feet. I should think, from the edge where the coal pressed her bottom hard to the water outside, it might have been two feet; it wasn't over that—that was abreast of where we stood. Slanting the oar forward on the vessel, there would be about eight to twelve inches of water before you touched the coal; that's as near as my memory will serve me. When we made these measurements with the oar, on the 30th of October, it was low water. We called it that; and it was raining hard, and we wanted to get out of the dock as soon as we could; and we were afraid the pile of coal would fall on us—the coal in the bin on the wharf.

Cross-int. 32. Was it then apparent, in the appearance of the coal on the wharf, where the coal in the dock had come from?

(Objected to.)

49 Ans. It was. The bin was broke away, right abreast of the coal. The studs in the bottom had given way.

Direct examination resumed.

Interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 23. How far from the top of the wharf was the top of the pile of coal that lay in the dock?

Ans. I should think, to my best judgment, it was seven feet; it wasn't over that. I did not measure it.

Cross-examination resumed.

Cross-interrogatory 7 by Mr. Dodge, and answer of the witness thereto.

Cross-int. 33. What did you make the measurements with on the 29th?

Ans. With a pole, I think.

JOHN A. PAINE.

EXHIBIT G—C. F. W.

First survey.

BOSTON, *October** 29, 1866.

We, the undersigned, by request of J. W. Hannum, of Boston, did this day repair on board of schooner "Bowdoin," of Portland, from Philadelphia, with a cargo of coal, and surveyed the said schooner as she then lay at Oakman & Eldredge's wharf, known as Caswell's wharf, Charlestown.

We found the schooner lying in a very bad position, healed off from the wharf, and the after part much twisted by being pressed over to port; her rails open at the scarfs amidships about one inch, and rail broken; her shear much out of shape; deck drawn open at main hatch; butts on deck and mast pardners opened and strained; vessel
50 badly hog'ed; butts in side open; mainmast head over to port about two feet. It being about one-third flood tide, found twelve feet on port side, opposite stern post, and eight feet at after part main rigging, and seven feet at main hatch; all these soundings on the port side, and five feet at the stem.

On the starboard side, opposite after part of main rigging, saw a large pile of coal in the dock, which the schooner was resting on, and, in our opinion, did the damage. As Mr. Oakman thought he could get out fifty tons before she grounded heavily, we recommend Capt. Randall to haul his vessel ahead about nineteen feet, to bring the bed of coal under the counter, and at high water push her further off from the wharf, and discharge as fast as possible to relieve the vessel.

October 30 made another survey. Found the vessel hauled about nineteen feet further ahead, and standing nearly upright. Examined the pile of coal in the dock, and found the vessel still resting upon it, but somewhat relieved by being further under the counter. The cargo was being discharged.

November 2nd made another survey. Found the cargo all out, and the vessel hauled astern, afloat; and, on examination, found the floor of the vessel somewhat crowning, about four inches; butt on kelson rider large and strained; two knees on starboard side broken near main hatch, and two broken on port side, besides two more being split. Recommend the vessel to be put into dry dock for further examination.

(Signed) JACOB G. PIERCE.
(") JOHN A. PAINE,
Port Warden.

[25-cent rev. stamp, cancelled.—P. W., J. A. P., J. G. P., Oct. 30, 1866.]

51 EXHIBIT H—C. F. W.

First survey on schooner "Bowdoin," Capt. Randall, at the request of Mr. Charles Sawyer.

NOVEMBER 1, 1866.

We, the undersigned, surveyed this schooner this day while lying at the wharf of Messrs. Oakman & Eldrige, at Charlestown, Mass. We find this vessel to be about four months old, and remarkably well built

* Word November had been partially erased, and word October written above it.

in every respect, so far as we can discover, and suitable for a first-class vessel.

We find her in a very bad condition, strained, twisted, and hogged; the lower masts are out of line, one with the other, two feet; the main rail on port side is broken and drawn apart; the butts in the deck, at bulkhead, hatch-com'ings, mast-bed, waterway, and in the bends are open and drawn apart; the side pieces of the mainmast bed is drawn by the middle pieces; plank-sheer and quarter rail started.

Three or more hanging knees are broken in the throat; and the ceiling on both sides amidships is rounded up, showing the vessel to have lain on a very uneven surface.

It being low water at the time this survey was held, we sounded from the deck of the vessel, and found the depth of water on port quarter to be ten feet; on starboard quarter, less than two feet. Abaft midships, and under the bilge on starboard side is a pile of coal, in our judgment about twenty-five tons, a portion of which extends to the keel of the vessel; the inner part of this coal, and near the wharf, is two or three feet out of water. On the port side, and directly opposite this pile of coal, there was seven feet of water; on port bow, four feet; and on starboard bow, three feet of water.

In consequence of the vessel lying on this hard and uneven surface, with the starboard bilge and quarter on this bed of coal, and the port bow bearing heavily on the mud bank, she became badly twisted and hogged.

And we recommend she be put in dry dock, to examine the keel and the bottom, and for repairs; previous to going into dock, we
52 advise the oakum be reefed out of all the butts that may be necessary to allow the vessel to resume her original shape, and that the hanging knees be also taken out for the same purpose.

Second survey.

NOVEMBER 2.

The distance these butts have drawn is from two-eighths to an inch.

We find the vessel removed from this perilous situation, and it being low water, we took a boat and sounded the keel bed, and found where the stern had rested eight feet of water; amidships, five feet; and forward, four feet.

Just abaft the main rigging is a pile of coal, twenty-five tons, or thereabouts, a portion of it two or three feet out of water; at the break of the quarter on starboard side, or about twenty feet from this coal, there was five feet of water on the port side; and opposite this pile of coal there was ten feet of water; this survey and soundings agreeing with those made yesterday. The wharfinger, who noticed our sounding, was asked if he warned the captain of this danger; he said, "No."

Third survey—held in Simpson's dock.

NOVEMBER 5.

We find six pair of hanging knees taken out, and many of the butts opened, as advised in a former survey. The vessel has partially resumed her original shape, and we recommend that three *strakes* of ceiling in the bilges be taken out to be replaced with five-inch plank, after the vessel has fully come to her proper shape. We also advise that two pair of pointers and hooks be put in aft, and also two additional hanging knees, and the whole thoroughly fastened. Bilges

retreenailed with about two thousand locust treenails. The butts and wood ends refastened wherever necessary. Ke'lson and keel rebolted fore and aft. New piece of port main rail, about thirty feet, and the scarfs of main rail on both sides, and also the quarter rail, rebolted. The vessel scraped, caulked, and painted, as before the damage.

53 NOVEMBER 16.

We find all the above-named repairs which we recommended have been completed in a thorough manner, and we now consider her as sea-worthy and in good condition for dry and perishable cargo.

(Signed) GEO. FRAZAR,
Surveyor for Am. Lloyds.
" DAVID ELLIOTT.
" JOHN DEVEREUX,
Marine Surveyor.
" EBENEZER DAVIS,
Marine Inspector.
" JOHN A. PAINE,
Port Warden.
" ALEXANDER P. SWETT,
Shipwright.

[25 cent rev. stamp cancelled. Geo. Frazar, Nov. 5, 1866.]

BOSTON, *November* 5, 1866.

Deposition of JACOB G. PIERCE, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, March 18, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1. State your name, age, residence, and occupation; and, if a mariner, state how long, and in what capacities you have so served.

Ans. Jacob G. Pierce; nearly 59 years of age; Milton is my residence; I am a mariner; I have been a mariner about 41 years, next month; that includes all the time since I began to go to sea up to this time. I have been at home the last three years; that should come out. I have been master mariner thirty-four years; I have served before the mast, mate, and second mate.

Int. 2. In October and November 1866, were you or not called on to survey the schooner "Bowdoin"; if so, state where said vessel was, in what condition you found her, and all that you did in respect to said vessel?

Ans. I was called on the 29th of October by J. W. Hannum. He requested me to get one of the port wardens, and go over and sur-
54 vey the schooner. We found the vessel laying at Oakman & Eldridge's wharf, known as Caswell's wharf. The vessel lay with her starboard side next to the wharf. We examined her, and found her resting on a bed of coal; her stern appeared to be pressed off; her stern was heeled over more than her bows—heeled over to port. In examining the vessel on deck, we found her a good deal strained; the main-hatch-combings seam was open, I should judge, half an inch; her butts were generally strained along in the direction where the bed of coal was; the seam next to the mast partners was a good deal opened; the head of the mainmast, looking from the head of the wharf, was out of plumb about two feet, showing that the stern had been pressed over, while the bows were fast in the mud. On sounding on the port side,

we found from eleven to twelve feet, I don't remember which, as far aft as we could get on the taffrail; and close up to the main rigging, just abaft it, eight feet, I think; then we went forward and measured up and down, under the stem, under the cutwater. I think we found five feet; I won't be sure whether it was four or five feet we found under the stem. Mr. Oakman was there. We asked him how much coal he thought he could get out that afternoon. He thought he could get out about fifty tons before night. We recommended the vessel to haul ahead, about nineteen or twenty feet, up to a spar that Mr. Oakman had as a boundary; there was a spar laid across there; I supposed the spar was put there as a boundary—I think it was a pretty good-sized spar. We measured on the wharf, and I think nineteen or twenty feet would have carried us nearly up to that spar; it seemed to be a mark, and I judged that vessels never went any further ahead than that. We recommended to Mr. Oakman to get the vessel ahead and discharge from the after part of the vessel as fast as he could, to relieve that particular place. That was all that occurred at that time, that I remember. I went there the next day, and met Captain Paine there. We found the vessel hauled ahead the distance that we recommended, about. It was raining at the time. Mr. Oakman was there, Captain Paine, and I think, Mr. Swett; I think he was there both times. I went on a ladder that was put over the side by somebody. I went down on that ladder on to a pile of coal. Mr. Oakman was also there. With the oar I felt under the vessel's counter, to see whether the pile of coal touched the vessel then, after moving ahead. I think that we had to put our
55 oar through some water under the counter before we came to the coal. It strikes me that there was some little water, which indicated that it was not quite low water. I don't think that water would have been there if it had been low water. I could feel the coal up against the vessel's bottom; it might have been five or six feet from the keel, I should think—guess work. I have no memorandum; I am taking it from memory; I lost my memorandum I made at the time. I have only this (referring to Exhibit G.) I wrote it off from my memorandum at the time, for myself and Captain Paine to sign as the report of the survey. After I came up Captain Paine went down and stood on the coal, and felt under the vessel's bottom. I remember that the vessel was pretty near upright, on the second survey. I think that was all. November 2d we made another survey, after the vessel was hauled astern. We found the cargo all out. Captain Payne and myself went into the hold of the vessel, and looked at the floor of the vessel, and we both thought the floor was crowned up about four inches above its original line. The butt on the keelson rider was large and strained; two knees on the starboard side broken, near the main hatch; and two more on the port side, besides two more being split; that, I believe, was all that happened in the third survey.

Int. 3. Whether or not said vessel was hogged?

Ans. Yes, sir, she was hogged; she was raised up where that pile of coal was.

Int. 4. You say you were directed to get a port warden to act with you on the surveys; state whether or not you got a port warden; and if so, who he was, and whether or not he acted with you on the surveys you have mentioned.

Ans. I went to the port warden's office, and made arrangements with Captain Paine, one of the port wardens, and he acted with me in the surveys.

Int. 5. On which side was the floor crowned up?

Ans. On the starboard side.

Int. 6. What amount of coal was there in the dock, according to your best judgment?

(Objected to.)

Ans. We calculated there was fifteen to twenty tons; it's difficult to get at that; the mud was soft, and I presume there may have
56 been a good deal of coal jammed into the mud, but that's what we calculated there was, looking at it.

Int. 7. How far was the place where you found the vessel resting on the coal from the stern-post, October 30th, the day you went into the dock?

Ans. Well, from thirty to forty feet; I don't know just the length of the vessel, there might be an error about that, judging from the length of the vessel.

Int. 8. On October 30th, was, or not, the after part of the vessel upright; and if not, how was it?

Ans. Well, it wasn't exactly upright; you couldn't get that kink out of it; take the whole vessel together, it was nearly upright; it must have relieved that crook some, being afloat again; what lean there was in the after part was to port.

Int. 9. Please state whether the statements in Exhibit G, which you say was written by you, are true.

(Objected to.)

Ans. Yes, sir, they are true.

Int. 10. What, if anything, was, in your judgment, the cause of the injury to said vessel?

(Objected to.)

Ans. That coal under the vessel.

Int. 11. Whether, or not, in your judgment, was said dock, with said coal in it, a fit and proper place for a vessel to lie in?

Ans. Not with that coal there.

Int. 12. What kind of a vessel was the "Bowdoin" as to build and strength?

Ans. I never examined the build of the vessel, particularly; she appeared to be a good vessel, as far as outward appearance.

Int. 13. Is, or not, the signature Jacob G. Pierce, on said Exhibit G, made by you?

Ans. Yes, sir.

57 *Cross-examination.*

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. What is the depth of that vessel from deck to the top of the keel, and what the length of the mainmast above the deck; if you do not know by measurement, give your best judgment?

Ans. My impression is about ten feet in that vessel, from the upper deck to the top of the keel, from ten to eleven feet; I should think the mainmast would be seventy feet, from sixty to seventy feet.

Cross-int. 2. Where did you stand to look at the masts, to see how much they were out of range at top?

Ans. At the head of the dock, on the pier, at the bow of the vessel.

Cross-int. 3. Did you notice at the second survey, whether they were still out of range?

Ans. I did, on the second day.

Cross-int. 4. Had not the twist at that time mostly come out of her?

Ans. Partially.

Cross-int. 5. How much do you think the heads of the masts were then out of range, if you formed an opinion at that time?

Ans. I don't think I did form an opinion, but I think it was lessened somewhat; the exact feet and inches I don't think I did form an opinion of—I noticed it was somewhat less.

Cross-int. 6. Was it not, in your opinion, less than half what it was when you first saw her?

Ans. I don't remember any further than that it was lessened; whether it was a little more than half, or a little less than half, I don't remember exactly; I know that it was lessened some.

Cross-int. 7. Was the whole vessel heeled off from the wharf, when you first saw her?

Ans. Yes, the whole vessel was heeled off, some; the stern more than the bows.

Cross-int. 8. How much was she heeled off? how near did her rail come to the wharf, forward of the twist?

Ans. We generally reckon those things by streaks; she was heeled off two or three streaks; it might have been four—I hardly think
58 it was as much as four. I didn't measure the distance of her rail from the wharf—guess-work, six or seven feet. A streak is generally six to seven and eight inches wide.

Cross-int. 9. How large an angle did the foremast make with a perpendicular line—I mean how large an angle was made by the heeling off?

Ans. Well, I should think it might have been from fifteen to twenty degrees;—it's a thing a person might err in. I don't know but it might have been as much as twenty degrees.

Cross-int. 10. At the second survey, you could not see where the coal touched the vessel, could you?

Ans. I don't think I could see the coal where it touched the vessel.

Cross-int. 11. Did you assist in making measurements and soundings in the keel track?

Ans. No, sir, not at the time spoken of; there was a time that I went down, shortly after the vessel left. I went down, and met Capt. Ebenezer Davis, and we sounded 'round in a boat—I think the mate of the schooner was there; and we sounded 'round where the stern of the vessel had lain; I have nothing to guide me what those soundings were.

Cross-int. 12. What did you sound with on the first day, when you made the soundings on the port side?

Ans. I think we had a boat's oar, and a pole, both.

Direct examination resumed.

Interrogatories by Mr. Lathrop for libellants and appellees, and answers of the witness thereto.

Int. 14. Whether or not when you went in a boat with Captain Davis did you find coal in the keel track?

(Objected to.)

Ans. There was a small schooner in there, when we were sounding. I forget her name; but she was so small that her stern-post came right opposite that pile of coal; I could see that this pile of coal extended nearly to her stern-post, but whether she lay in the same keel track, I don't know.

59 Int. 15. When you say you sounded where the stern of the "Bowdoin" had been, do you mean where she lay when you first saw her, or where she lay when she had been hauled ahead?

Ans. I think we must have sounded both places, we sounded all around there; the stern-post of this small schooner was square with the pile of coal.

Int. 16. What part of the pile of coal was the stern of the small schooner square with?

Ans. Pretty near the centre.

Int. 17. Did you or not sound to see whether there was coal in a line with the keel of the small schooner astern of her?

Ans. We didn't sound for that purpose; and I don't remember feeling any.

JACOB. G. PIERCE.

Deposition of ALEXANDER B. SWETT, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, March 19th 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1. State your name, age, residence, and occupation, and how long you have been engaged in the same, and where you now do business.

Ans. Alexander B. Swett; I am forty-two years of age; I reside in Chelsea; I am a shipwright; I have been in that business about twenty-six years; I now do business at 213 Commercial street, in Boston.

Int. 2. In October and November, 1866, did you or not see the schooner "Bowdoin" at Oakman & Eldridge's wharf, Charlestown; and, if so, state when the first time, and describe the condition of said vessel then, and what you did; and if you saw her again, state when and what her condition was, and what you did each time.

Ans. I did so see her; the first time was October the 29; I went
60 over; I saw the vessel laying heeled off from the wharf; I saw her masts out of line very much, some two feet or so; then her butts in her wales plank-shears, were opened from a quarter to three-quarters of an inch; her mast-beds (where the mast goes down through) were drawn very much, one by the other, so that the ends were uneven. The rail on the port side was broken off; on the starboard side it was broke some, but not off, strained badly; the scarfs were strained, hauled apart, about half an inch. We found that her port quarter had twisted over considerable, showing a bad strain. The first time I saw her, that was the condition I saw her in. I went with Captain Pierce and Captain Paine, and measured 'round the depth of water on the 29th. Well, where I measured was on the port quarter, on the outside; as nigh as my memory will allow me to say, I think it was about twelve feet of water outside; then I went along amidships, close along the after side of the main rigging, there, as nigh as I can remember, was eight feet of water; then we went another place forward, and measured; there was five feet here, as nigh as I can remember now. I think that is as far as we went that day. The second time I was there, was the first day of November; then I got Captain Elliott to go over that day, by request from Captain Sawyer. We went over the vessel, and I took my rule and measured the butts in the wales, and in the decks, to see how far they were apart. I found them from one-quarter to three-quarters of an inch open; the rails were broken, as I stated before, the port one broke off. Then we

went down into the hold of the vessel; and found two of the knees on the starboard side broken off, and two more split on the same side badly; the same on the port side—same number. We examined the bilge, and found on the starboard side, the floor hogged up; on the port side very little. I think that was all that day, as nigh as I can call to mind now. The second day of November I was there again with Captain Elliott, Captain Frazer, and Captain Paine. We examined the dock that day in the bed where the "Bowdoin" had lain; found her hauled out of the bed where she had lain. We went into the boat, four of us; Captain Elliott pushed the boat along; Captain Frazer took the notes of what we done, (measurements.) Captain Paine put the oar down into the keel track to see how much water there was, and I measured the depth on the oar; that is all, I believe, that day. Then I think, as nigh as I can recollect, it was the 5th, we took her into the dock; Simpson's dry dry dock, I mean.

61 Int. 3. Was or not said vessel repaired by you?

Ans. She was.

Int. 4. State the depth of water you found in the keel track, the day you sounded from the boat.

Ans. It was, as nigh as I can remember, eight feet aft, where her stern lay; about five feet middle way; and, I think, four feet forwards, as nigh as I can remember. I mean her keel track, where she was the first day I was there, on the 29th—where she received her injury.

Int. 5. Did you, or not, on any of the days you were there, notice a pile of coal in the dock? If so, describe it.

Ans. I did; I found a pile of coal the first time I was there, under her bilge; somewheres about her main chains; just abaft her main chains, on the starboard side; it looked as though it had fell from the pen on the wharf, into the dock, and run in towards the keel of the vessel, as far as we could see. I didn't state before, wholly; I was down on that pile of coal the first day; I was there when Captain Paine measured down to see how far the pile of coal extended; as nigh as we could judge by the feeling of the coal, the coal continued to her keel.

Int. 6. Do you or not remember whether it was the first or second day, that you were on the pile of coal with Captain Paine?

Ans. I think it was the first day—I think it was. I was there every day; I think not; I think it was the second day that I was there. It has been some time; it's a thing I have never brought up to my mind.

Int. 7. Was it before or after the vessel had been hauled ahead that you were on the pile of coal?

Ans. It was after she was hauled ahead; I think it was. I think it was before she was hauled ahead. In fact, I can't say which day it was.

Int. 8. How near the cap-sill of the wharf was the top of the pile of coal that was in the dock?

Ans. I should judge it was about twelve feet.

Int. 9. How near did the bin come to the edge of the wharf?

Ans. I should judge it was about three feet.

Int. 10. Was there or not anything on the wharf to indicate that the coal was in the dock?

62 Ans. No, sir: I shouldn't suppose there was; I didn't see anything that indicated there was coal in the dock.

Int. 11. How large, in your judgment, was the pile of coal that was in the dock?

(Objected to.)

Ans. I should judge somewhere from twenty to twenty-five tons.

Int. 12. On the second of November, when you sounded from the boat, did you or not find coal in the keel track?

Ans. We called it coal, by the sound on the oar that we sounded with; I should think it was.

Int. 13. What was this sound; describe it.

Ans. Well, it sounded dead, kind of; and, when the oar would strike it, it would roll over as if it was kind of round; you could tell by the sound whether it was a solid ledge or something small; it had a different sound on the oar.

Int. 14. Did you or not find any portion of the keel track higher than the part before and behind it; if so where was it?

Ans. I should judge it was about thirty to thirty-five feet from where her stern first lay, in the keel track; it was in the keel track, twenty-five to thirty feet from where her stern-post was, six inches, or so, rising.

Int. 15. What do you mean by "six inches, or so, rising?"

Ans. It was swelled up, rising up; it was swelled up in the centre, where the keel lay, higher than in other places; it seemed to rise up kind of a hill-like, uneven surface.

Int. 16. Was or not this part opposite the pile of coal?

Ans. It was.

Int. 17. How long was this place which was higher than the rest of the keel track?

Ans. Well, I should think it might be ten or twelve feet; twelve feet or so.

Int. 18. Did you, at any time you were at Oakman & Eldridge's wharf, hear anything said, by any one, as to whether the captain of the "Bowdoin" had been warned of the danger; if so, what was said, and by whom, and when?

(Objected to, as calling for the declarations of persons whose declarations are not evidence.)

63 Ans. It was Captain Frazer in the boat asked the wharfinger if he had told the captain if there was any danger in the dock, and he said, No; the wharfinger said, No. It was the second day of November, the day we surveyed the keel track in the boat.

(Answer objected to as containing declarations of persons, not evidence.)

Int. 19. Who was this wharfinger?

Ans. I can't call his name; I have seen him frequently, and seen him on the wharf, since and before.

Int. 20. Do you know whether or not he was the person in charge of Oakman and Eldridge's wharf?

Ans. I have called for the wharfinger there before the vessel went there, to inquire for vessels; the men—working men on the wharf—have pointed him out and said, there he is, the wharfinger of the wharf.

Int. 21. What, if anything, was, in your judgment, the cause of the injury to the "Bowdoin," which she sustained in Oakman and Eldridge's dock?

(Objected to, witness not shown to be an expert.)

Ans. I think it was the pile of coal that lay under her.

Int. 22. Whether or not, in your judgment, was said dock, with said coal in it, a fit and proper place for a vessel to lie in?

(Objected to, as last.)

Ans. I don't think it was safe with the pile of coal there.

Int. 23. What kind of a vessel was the "Bowdoin" as to build and strength?

Ans. She was an oak vessel—A 1 vessel; she was very heavy timbered, and the best of work on her.

Int. 24. Please examine the paper now shown you, marked Exhibit H, C. F. W., and state whether or not it is signed by you, and whether or not the statements therein contained are true.

(Objected to as calling for incompetent evidence.)

Ans. It is signed by me, and the statement is true; all the statements in that survey are true.

64 *Cross-examination.*

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. How came you at the wharf where the vessel was on the 29th of October, November 1st, and November 2d?

Ans. I met the captain the 29th day in Commercial st., and he wanted me to go over aboard of his vessel that morning. I acted on all the surveys by the request of Captain Sawyer, and the captain of the "Bowdoin," Captain Randall.

Cross-int. 2. Did you act in all the surveys; and did you sign them all?

Ans. Yes, sir, I did.

(Witness answered, examining Exhibit H.)

Cross-int. 3. Were you not there seeking the job of repairing her?

Ans. I was.

Cross-int. 4. How long is the "Bowdoin," if you know?

Ans. I think a hundred and eight feet.

Cross-int. 5. From what part to what part?

Ans. The whole length of keel.

Cross-int. 6. How long on deck?

Ans. About a hundred and fifteen feet.

Cross-int. 7. Where was the sounding on the port quarter when you found twelve feet of water made?

Ans. It was forward from the taffrail rail, about eight feet; that is, the after part of the rail; that is some distance up from the deck.

Cross-int. 8. What were these soundings made with?

Ans. I think it was a pole the first day, from the vessel.

Cross-int. 9. Did you make them yourself?

Ans. Yes, I did that one; I took hold of the pole and sounded it myself, after the captain had; I mean Captain Paine.

Cross-int. 10. Did you measure on the pole to see what the depth was?

Ans. I think I did.

Cross-int. 11. Then you did about all that was done, did you not?

Ans. No, sir.

65 Cross-int. 12. If you sounded and measured both, what remained to be done?

Ans. We both done the same, all but the measuring; I don't know but what they may have measured it themselves; we had considerable talk over it.

Cross-int. 13. How far is it from the place on the vessel where the twelve feet soundings were to the after shroud of the main rigging, if you know?

Ans. I never measured it; I don't know.

Cross-int. 14. As nearly as you can judge, how much?

Ans. It might have been twenty feet, more or less.

Cross-int. 15. Is the after part of the main rigging the same as the after shroud of the main rigging?

Ans. They mean the same thing.

Cross-int. 16. Do you know how many cubic feet there are in a ton of coal?

Ans. I do not, sir.

Cross-int. 17. Did you measure the height, depth, or breadth of the pile of coal in the dock?

Ans. No, sir, I didn't measure it.

Direct examination resumed.

Interrogatories of Mr. Lathrop, and answers of the witness thereto.

Int. 25. When you say you were on all the surveys, do you mean that you were on those contained in Exhibit H; or do you mean to include those in Exhibit G, signed by Captain Paine and by Captain Pierce?

Ans. Well, I was on those surveys, but I was not called on the surveys held by Captain Pierce and Captain Paine. I was there with them and assisted in measuring.

Int. 26. Do you or not mean to state the length of the "Bowdoin" with accuracy?

Ans. I do not.

Int. 27. Do you or not know whether Captain Paine and Cap-
66 tain Pierce sounded on the port quarter within two or three feet of the taffrail?

Ans. I think it was about from three to six feet.

Int. 28. Can you or not state with certainty that they did not measure within three feet of the taffrail?

Ans. They did not, within three feet. I can't say whether it was within three feet or not.

A. B. SWETT.

Deposition of DAVID ELLIOTT, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, March 19 and 20, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1. State your name, age, residence, and occupation; and if you are a mariner, state how long you have been such, and in what capacities.

Ans. David Elliott; fifty-three years old; I reside in Newtonville; I have been a mariner thirty-seven years; I am now a ship agent; I have been master twenty-two years; I was in all capacities from cook to master.

Int. 2. Were you or not called on to survey the schooner "Bowdoin," then lying in Oakman & Eldridge's dock, Charlestown, in 1866? If so, state the condition you found the vessel in, and what you did.

Ans. I was called to survey her; I found the vessel, as they said, hauled ahead from the position where she lay before; this was on the 1st day of November, at low water. I found the vessel badly twisted and hogged; the main rail on the port side broken and drawn apart;

(I was thinking which side of the vessel it was, as I stood;) and, on the other side the rail was not broken, but the scarf drawn apart; the butts in the deck and in the wales and plank-shear, bed-pieces to the mainmast, were drawn apart from one fourth to three-fourths of an
67 inch; they were discharging cargo at this time; we went in her hold, and found six knees broken and split on both sides; and the floor on the starboard side, along abreast of the mainmast, rounded up. Captain Frazer and myself were together, and Mr. Swett was with us. We sounded aft, abreast of the after part of the deck, on the port side, and found, if I remember right, ten feet of water; we then sounded on the inside, the starboard side opposite, and found two feet of water, if I remember right; we then sounded amidships, on the port side, and found five feet; we then sounded forward on the port side and found four feet of water; and on the starboard side forward about two and a-half to three feet. There was at this time a pile of coal about abreast of the forward part of the poop; that's all that I remember about the first survey.

Int. 3. Please examine the exhibit now shown you, marked "H, C. F. W.," and state whether you were on all the surveys mentioned in said exhibit, and whether the statements therein contained are true.

(Objected to, as calling for incompetent evidence.)

Ans. Yes, sir; I was on all the surveys mentioned therein; the statements therein contained are true.

Int. 4. Were you or not in the boat on November 2d, with others, when soundings of said dock were made? If so, who were with you, and what was done?

Ans. I was in the boat; Captain Paine, Captain Frazer, Mr. Swett and myself; we went into the schooner's boat, and sounded in the keel track; I took an oar, and pushed the boat along; Captain Paine sounded with an oar; Mr. Swett took the measure, or measured; Captain Frazer took the minutes of the soundings and remarks.

Int. 5. Where was the "Bowdoin" then?

Ans. She was lying alongside the wharf, below where she was discharged, and below where she lay when she was in her bed first; she had finished discharging, and hauled to a berth below.

Int. 6. State whether or not you found any coal in said keel track where the vessel lay, after she was hauled ahead, as she was when you first saw her.

Ans. We did.

Int. 7. Where was this place where you found coal in the keel track, in respect to the pile of coal?

68 Ans. It was right abreast of the pile of coal; it was an extension of the pile of coal.

Int. 8. What, in your judgment, was the cause of the injury sustained by the "Bowdoin" in the said dock?

(Objected to.)

Ans. By lying on that pile of coal.

Int. 9. Was or not said dock, with said coal in it, in your judgment, a fit and proper place for a vessel to lie?

(Objected to.)

Ans. That berth was not, where the coal was.

Int. 10. While in the boat, taking the soundings, on November 2d, did you hear any conversation about whether the captain was warned of his danger? and if so, state what was said, and who said it.

(Objected to, as calling for incompetent evidence.)

Ans. While we were in the boat, sounding, I heard some one say

"There is the wharfinger;" Captain Frazer looked up, and asked him if he warned the captain of the danger in the dock, before he ordered him in there, his reply was, No.

Int. 11. How far was it in your judgment from the cap-sill of the wharf to the top of the pile of coal?

Ans. I should think it was somewhere from ten to twelve feet; I didn't take particular notice.

Int. 12. How many tons of coal should you judge were in the dock?

(Objected to, because witness has not been shown to be competent to form an opinion.)

Ans. I looked at it, at the time when I was there, on the survey of the vessel, and thought there was from twenty to twenty-five tons. I am wrong there, it was on the 2d, the day that we surveyed the dock.

Int. 13. State whether or not you saw anything on the wharf to indicate that there was a pile of coal in the dock.

Ans. I did not.

Int. 14. Is said Exhibit H signed by you?

Ans. Yes, sir.

At five o'clock p. m., the hearing was adjourned until one o'clock, p. m., to-morrow, March 20th, at the same place.

69 FRIDAY, *March 20th*, 1868.

The hearing was resumed, pursuant to adjournment, the respective counsel and the witness being present.

Int. 15. In your answer to the second interrogatory, you say, "We sounded aft abreast of the after part of the deck on the port side, and found, if I remember right, ten feet of water." Please state what you mean by abreast of the after part of the deck; how near the taffrail was it?

Ans. Well, I should think, from two and a half to three feet; it was about abreast of the stern-post.

Cross-examination.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. In making the measurements in the keel track, where did you stand to propel the boat?

Ans. I stood on the side, pretty well aft; I think, on the starboard side of the boat.

Cross-int. 2. What kind of a boat was it?

Ans. A common ship's boat; I should think somewhere twenty-one to twenty-two feet long.

Cross-int. 3. By what means did you propel the boat?

Ans. I pushed the boat with the oar. If it is in order, I will state that I think the captain, or mate, was in the boat also, and assisted to propel the boat.

Cross-int. 4. Where did the others stand?

Ans. Captain Paine stood forward with his oar, and sounded; Mr. Swett near by, abaft him, to measure. I think Captain Frazer near the middle, or abaft the middle.

Cross-int. 5. Did you see that the coal bin on the wharf was broken away?

Ans. Yes, sir; I saw that; but it was mentioned to me, about the pile of coal breaking away, and I saw the pen where it had broke.

Cross-int. 6. Did you see that the coal that ran out from the bin extended down to the cap-sill of the wharf?

70 Ans. That is on the wharf? No, sir.

Cross-int. 7. Who mentioned to you that the coal bin had broken away?

Ans. I can't say.

Cross-int. 8. Where were you when it was mentioned to you?

Ans. I think Mr. Swett mentioned it to me, when he asked me to go over and survey the vessel; I can't say where I was.

DAVID ELLIOTT.

Deposition of EBENEZER DAVIS, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, March 20, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1. State your name, age, residence and occupation, and how long you have been engaged in the same.

Ans. Ebenezer Davis is my name; I am sixty-five years of age; I reside in Somerville and do business in State street, in Boston; I am marine inspector for Boston Board of Underwriters; I have been so engaged about twenty-one years; since June, 1847.

Int. 2. Have you or not been a mariner; and if so, for how long, and in what capacities?

Ans. Yes, sir; I have been a mariner for about thirty years, before 1847; I have been in all capacities, from cook aboard a fishing vessel to master of a ship. I commanded a vessel for fifteen years.

Int. 3. Were you or not called on to survey the schooner "Bowdoin," then lying in Oakman and Eldridge's dock, Charlestown? If yea, state in what condition you found the vessel.

Ans. I was called upon to survey her; I found her lying at Oakman & Eldridge's wharf; I think her cargo was about all discharged; she was badly out of her original shape, what I should call both hogged and twisted; her rail was broken, I think on the port side—I

71 won't be positive of the side—and drawn apart, about half an inch; the butts in the deck and mainmast-bed, and at the combings of the hatch, (main or after hatch, I don't know which they would call it, aboard that vessel,) were also drawn apart from three-eighths to half an inch; the port quarter had settled, giving her a twist, throwing her masts out of line from two feet to two and a half feet, as near as I could judge; and, in the hold, we found some of the hanging knees broken; I couldn't say how many, now; that's all I recollect with regard to the vessel's condition at the time.

Int. 4. On what day did you first see the said vessel?

Ans. I think it was the first day of November; I wouldn't be positive about that; I suppose the report of the survey would show; it was about the 1st of November.

Int. 5. Please examine the paper, marked Exhibit H, C. F. W., now shown you, and state whether or not it is signed by you, and whether or not you were on the surveys therein mentioned.

(Objected to, as calling for incompetent evidence.)

Ans. It is signed by me—this first survey. I will say that I surveyed her the same day the other gentlemen did, but not at the same time; I couldn't be spared from court at the time they were there; they say

they were there at low water; it was not low water when I was there. I examined the vessel, and saw her condition, and found her condition correctly described in this survey. I went there several days afterwards, I can't say how many days, in company with Captain Pierce, at low water, and examined the bottom by sounding, and found it to agree about with the soundings described in this survey. This second survey, I was not present. The third survey I was; the vessel was then in dock; the vessel had partially resumed her original shape; she had grounded on the blocks; I was on that third survey. I was on the fourth survey mentioned there—on November 16th.

(All those portions of the answer which speak of the correctness of the statements in said report of surveys objected to, as incompetent evidence.)

Int. 6. Please state whether or not the statements contained in said Exhibit H, of the surveys, when you were present, are true.

(Objected to, as calling for incompetent evidence.)

Ans. The third one is true, and the fourth one is true.

72 Int. 7. State whether or not the condition of said vessel is correctly stated in said first survey.

(Objected to, as calling for incompetent evidence.)

Ans. I think it is, sir.

Int. 8. State whether or not on the day you went in the boat with Captain Pierce you found coal in the keel track where the vessel lay when you saw her on November 1st.

Ans. We did, sir.

Int. 9. State whether or not the said dock, with said coal in it, was a fit and proper place for a vessel to lie in.

Ans. No, sir; I don't think it was.

Cross-examination.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. How deep was the water where you say you found coal in the keel track?

Ans. Well, it's been so long since this happened, and I made no memorandum of it, I couldn't say positively. I can tell you what my impressions are. My impressions are, there was about three or four feet difference in the depth of water where the coal was in her keel track, and the place where the heel of her stern-post was. My impression is, that it was three or four feet over the coal, and about seven where the heel of her stern-post was; this is my impression only.

Cross-int. 2. Who was with you when you made this examination, and what did you go in to get to the place where the coal was?

Ans. I was with Captain Pierce; we were in a boat—a small boat.

Cross-int. 3. Did you sound the depth of the water, or did Captain Pierce?

Ans. I am sure I couldn't say, now.

Cross-int. 4. What did either of you sound with?

Ans. I think it was an oar, or a boat hook; probably an oar.

Cross-int. 5. You made no memorandum, did you?

Ans. No, sir.

73 Cross-int. 6. Did you not understand that the vessel had lain further down the dock than she was when you saw her?

Ans. I don't recollect. I seem to have an impression that she had been hauled ahead some, when I first saw her; but I can't say positive.

Cross-int. 7. Do you remember seeing a jog in the wharf, dividing the upper from the lower wharf?

Ans. No, sir; I do not.

Cross-int. 8. Are you certain that you and Captain Pierce were not sounding in the keel track where the vessel laid before you saw her, and not the keel track where she was when you first saw her?

Ans. Oh, I am certain we sounded in the keel track where I first saw her. I think there was a mark made by some one, not myself, on the cap-sill of the wharf, just opposite her stern-post, at the time she received her damage. I was told it was opposite her stern-post.

Cross-int. 9. How much farther down was that mark than she was when you first saw her?

Ans. That I couldn't say, sir.

Cross-int. 10. Was it not, according to your best memory, some twenty feet farther down?

Ans. Well, I couldn't say positively as to that, sir.

Cross-int. 11. Did you not, in sounding the keel track, sound down as far as that mark?

Ans. Yes, sir.

Cross-int. 12. And you treated that as the place where her stern-post had been when she received her damage, did you not?

Ans. Yes, sir; I think we took it for granted that that was the place where her stern had been.

Cross-int. 13. When, in answer to the first cross-interrogatory, you say that it is your impression that you found three to four feet difference in the depth of the water where the coal was and the depth where her stern-post was, you mean where her stern-post was before she was hauled ahead, do you not?

Ans. Yes, sir.

Cross-int. 14. Did you see a pile of coal in the dock?

Ans. Yes, sir.

Cross-int. 15. Do you know anything about Mr. Oakman's dock, except what you saw those days when you were there?

74 Ans. No, sir.

Cross-int. 16. Did you go over to the dock with Captain Pierce?

Ans. Yes, sir.

Cross-int. 17. Did you and he talk about the condition of the vessel before you saw her?

Ans. (Oh, we had both seen the vessel, sir, and held surveys on her before we went over to sound the track.) I don't know as we did.

Cross-int. 18. Did you not learn from Captain Pierce that he had seen her before he saw her with you?

Ans. I don't know whether I learned it from Captain Pierce or not: I heard he had seen her. Captain Paine and Captain Pierce were the first two who saw her; I think they were the first two who saw her.

Cross-int. 19. Did he not tell you that, on the first day, before she had hauled ahead, the masts were out of line two feet; and when you and he saw her together, did he not say that the twist had come out of her about one-half?

Ans. No, sir; I have no recollection of his saying that.

Cross int. 20. Were the butts on deck opened equally on both sides, so far as you now remember?

Ans. Yes, sir; as far as I remember, there was no particular difference.

EBENEZER DAVIS.

Deposition of GEORGE FRAZAR, a witness for libellants and appellees, taken April 4th, 1868, before Charles F. Walcott, notary public.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1. State your name, age, residence, and occupation, and how long you have been engaged in the same.

Ans. George Frazar; I am sixty-six years old; Watertown, Mass.; I am marine surveyor, at present; I have been so engaged about five years. I am marine surveyor for ordinary surveys, and for the
75 American Lloyd's Registry of Shipping in New York; I combine both. I was originally a ship-builder, for over thirty years.

Int. 2. Were you or not called on to survey the schooner "Bowdoin," in 1866; if so, when and where was said vessel at the time you first saw her?

Ans. I was called, on the first day of November, 1866, to go over and survey the schooner "Bowdoin." We found her at a wharf in Charlestown, said to be Oakman & Eldridge's wharf.

Int. 3. What was the condition of said vessel at the time?

Ans. We found the vessel to be listed a little to port, a good deal twisted and hogged, and strained. We went below, down in the hold, and we found the ceiling crowned up. She lay the starboard side to wharf. The floor of the vessel was crowned up, the starboard side a good deal; the port side not so much, but quite perceptible. We examined her knees, and found three or more hanging knees broken from twisting; the butts in the deck planks and bends, and the scarfs in both main rails drawn apart. The mast-bed was drawn apart. The two masts were out of line one with the other, in my judgment, at least two feet.

Int. 4. Were you or not present at the several surveys mentioned in the paper now shown you, marked "Exhibit H, C. F. W.," and did you or not participate in the same?

Ans. I was present, and participated in the surveys as recorded in this paper.

Int. 5. By whom and when was said Exhibit H drawn up, if you know?

Ans. I drew it up myself, after the final conclusion of the whole matter; about the 15th of November, I think. This is my handwriting. I think the report was made the 4th or 5th of November. This report was written the 5th; I should like to add, the work having been very nearly completed at that time—about finished, with some trifling exceptions.

Int. 6. Please examine said paper, and state whether the whole of the same was or not written on the 5th; and if not, state what part was then written.

Ans. I wish to make a correction here. The work, at that time, was all laid out, but was not completed till the 13th. There were so many of us that we did not see the necessity of our all being present after the 5th, and we concluded then what repairs were necessary.
76 As much of this paper was written on the 5th as the repairs recommended. All the repairs recommended was written then.

Int. 7. Please indicate down to what words on said exhibit was written on the 5th.

Ans. Down to "November 16th," including the word damage.

Int. 8. Is or not said exhibit signed by you, and are or not the statements therein contained correct?

(Last clause objected to, as calling for incompetent evidence.)

Ans. Yes, sir.

Int. 9. While on said surveys, did you or not notice any coal in the dock where the said schooner lay, when you saw her on November 1st, 1866; and if so, where was said coal, and how much of it was there, according to your best judgment?

Ans. We did. There was a pile of coal a little abaft amidships, on the starboard side, adjoining the wharf. The top of the pile of coal was out of the water about two feet, possibly more than that, fully two feet; about twenty-five tons.

Int. 10. At what state of the tide was the top of said coal out of water two feet?

Ans. It was about low water.

Int. 11. How far was the top of the pile of coal from the cap-sill of the wharf?

Ans. It was, I should judge, about ten feet.

Int. 12. Did or not said coal extend to the keel track of said vessel?

Ans. It did; but not at that height. It spread out thinner.

Int. 13. Did you or not, after the said vessel was hauled out of her berth, take any soundings in the keel track where the said vessel lay at the time she met with the accident; and if so, what were they, and at what state of the tide?

Ans. Yes, sir; but we first took soundings from the deck before she was moved. The soundings we took in the keel track was eight feet aft where her stern lay, five feet amidships, and four feet forward. That is the general line of the keel bed. In the keel track, opposite the pile of coal, there was a rising, I should judge, of very nearly a foot. It was pretty nearly low water.

77 Int. 14. Who were with you at this time, and how were the soundings made?

Ans, Captain Paine sounded with the oar, I think. Mr. Swett measured with his rule. I noted down the figures they gave me in my memorandum book, and saw the figures they measured myself. Captain Elliott propelled the boat with an oar.

Int. 15. What were you in at the time you sounded in the keel track?

Ans. The vessel's long boat, I think. I won't be positive what boat it was. I think it was the schooner's boat.

Int. 16. Are or not the soundings taken from the deck correctly stated in said Exhibit H?

(Objected to as calling for incompetent evidence.)

Ans. They are.

Int. 17. What, in your judgment, was the cause of the injury which said schooner sustained in said dock?

(Objected to.)

Ans. Solely by the coal.

Int. 18. Whether or not was said dock, with said coal in it, a fit and proper place for a vessel to lie in?

(Objected to.)

Ans. No, sir; it was not.

Int. 19. What sort of vessel was the "Bowdoin" as to build and strength?

Ans. She was built in a first rate manner; rather extra well built.

Int. 20. While in the boat at the time you took the soundings in the keel track, did you or not have any conversation with any one on the wharf as to whether the captain of the "Bowdoin" was warned of his danger? and if so, state the conversation.

(Objected to as calling for incompetent evidence.)

Ans. I did. The wharfinger was on the wharf noticing our sounding. I asked him if he warned the captain of this danger, and he said no.

78 *Cross-examination.*

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Which branch of the New York American Lloyds do you act for?

Ans. The original or universal.

Cross-int. 2. What do you mean by the universal?

Ans. 'Tis a phrase adopted by the author of the institution to signify its wide circulation.

Cross-int. 3. You call it universal because he does?

Ans. Of course; that's the title of the book.

Cross-int. 4. Did you ever in your life make any measurements or surveys in that dock, except at the times you have stated?

Ans. No, sir; only those stated in that report. (Indicating Exhibit H.)

Cross-int. 5. Did you measure the height, length, and breadth of the pile of coal?

Ans. I did not, except in my judgment.

Cross-int. 6. Do you know where the coal came from?

Ans. I do not; very evident reason where it came from.

Cross-int. 7. What was the very evident reason?

Ans. The bulkhead had burst right over the coal—on the wharf over the coal. There was a very large cavity in the pile of coal on the wharf directly opposite their coal in the dock.

Cross-int. 8. Did you notice this at the time?

Ans. I did when I first surveyed.

Cross-int. 9. On what day and at what time of day did you make the first survey?

Ans. On the first of November; the hour I don't recollect, but not far from noon.

Cross-int. 10. Was the vessel then unloaded, in whole or in part?

Ans. Pretty nearly unloaded; so much so that you could see her floor out of shape.

Cross-int. 11. At what time of tide did you make this first survey?

Ans. About low water.

79 Cross-int. 12. All your surveys were at about low water, were they?

Ans. They were.

Cross-int. 13. On what day, and at what time of day, did you make the keel track soundings?

Ans. It was on the 2d of November, I think; I didn't note the hour down, and don't recollect; I should think about two o'clock; about one or two.

Cross-int. 14. Why did you not note down the hour with your other memoranda?

Ans. Well, it's not usual to be so precise; I know no particular reason why we didn't do it, but that.

Cross-int. 15. Do you know whether when you saw the vessel she had been moved forward from the position in which she was first placed, when she came to the wharf?

Ans. I do not.

Cross-int. 16. Did you suppose, when you saw her, that she was where she was first placed?

Ans. I did.

Cross-int. 17. And you are willing to swear that, when you saw her on the first of November, the pile of coal was but a little aft of 'midships, are you?

Ans. I am.

Cross-int. 18. What do you mean by a little?

Ans. Well, within ten feet; within twelve feet, I rather think.

Cross-int. 19. When did you first learn that she had been moved ahead when you first saw her, from the position in which she was first placed?

Ans. I don't recollect; the next day, I think.

Cross-int. 20. Who was with you on the first survey?

Ans. Eben. Davis, Captain Paine, Captain Elliott, Mr. Swett—those names in the report.

Cross-int. 21. You have testified in this case before, have you not, in the district court?

Ans. I have.

Cross-int. 22. Did you not there swear that when you first saw her, you were told that she was moved ahead from the place where she was first placed, and where she received her injury?

80 Ans. Yes, I recollect now; there was a cut in the wharf; Captain Paine, who was on the previous survey, said that was where her stern lay. I wish to correct my previous statement. I recollect distinctly (I wish that you would wait before you write that till I refresh my memory; I can't keep all these things in my head for two years; I have too many surveys to make.) After refreshing my memory, I find that, on the first day we examined her, she lay as I testified at first; on the second day we found her moved; and Captain Paine said she had been moved under his direction.

Cross-int. 23. And these two surveys made by you were on the first and second of November, 1866, were they?

Ans. Yes, sir.

Cross-int. 24. How far out from the cap-sill of the wharf were the keel track measurements made?

Ans. About fourteen feet.

Cross-int. 25. (De bene.) What makes you think the man that you spoke to on the wharf was the wharfinger?

Ans. Some one in the boat said it was the wharfinger.

(Mr. Dodge called for Exhibit H, and examined it.)

Cross-int. 26. (De bene.) Is the date November 5th, 1866, below the stamp in your handwriting in said report?

Ans. Yes, sir.

Cross-int. 27. (De bene.) When was that placed there? Was it placed there on the 5th?

Ans. I can't recollect.

Cross-int. 28. (De bene.) Was it placed there before or after the date November 16th was written?

Ans. Before. I can't recollect; it wouldn't be possible for me to recollect.

Cross-int. 29. (De bene.) Was not all in that report, after the word damage, and down to the signatures, interlined, after the report had been made and signed?

Ans. No, sir; it was not.

Cross-int. 30. (De bene.) How then does it occur that the date of November 16th precedes the date November 5th?

Ans. There is a United States law that all marine surveys and
81 reports shall have a stamp, and we attach that stamp, and date it, at any time we choose, during the progress of the surveys.

Cross-int. 31. (De bene.) I do not refer to the date on the stamp, but the date November 5th in the margin.

Ans. We generally make those dates to correspond; because, in this cause, all the repairs contemplated were then noted, it being the last general survey.

Cross-int. 32. (De bene.) How, then, is it that the date November 16 precedes the date November 5th in the margin, if the former was not interlined?

Ans. At that time, as I told you before, November 5th—at that time all the repairs considered necessary were then recommended. Mr. Sawyer then called all the surveyors together on deck, and said to them, "Gentlemen, I propose to put the repairs of this vessel in charge of Captain Frazar, to be done under his direction." I attended to that duty; was there every day for about a week, possibly longer, and saw that the repairs were being faithfully done; then, on its final completion, I informed the other surveyors, and they signed the report.

Cross-int. 33. You have spoken of several keel-track soundings; were they all made at points equi-distant from the cap-sill of the wharf?

Ans. They were.

GEO. FRAZAR.

Deposition of ASA G. HASKELL, a witness for the respondents, taken before John W. Hudson, notary public, November 16th, 1867.

Direct interrogatories put by Mr. Dodge, and answers thereto.

Int. 1. Please state your name, age, residence, and business; and if you say you are a master mariner, state how long you have been a master mariner, and how long a mariner.

Ans. Asa G Haskell. I belong to Deer Isle, Me. I have been master of a vessel twenty-eight years. I am forty-nine years old. I
82 have been a mariner forty years. I started to go to sea when I was nine years old.

Int. 2. Of what vessel, if any, are you now master; and of what vessel, if any, were you master in October, 1866?

Ans. I am now master of the "Rose Haskell." In October, 1866, I was master of the "Mary D. Haskell."

Int. 3. Who was, in October, 1866, the owner of the "Mary D. Haskell," and who is now owner of her?

Ans. Asa G. Haskell, Franklin Curtis, Moses S. Stevens, and E. R. Sawyer, were her owners when she was built, and are her owners now. they were her owners in October, 1866. I am the Asa G. Haskell who owns a part of her.

Int. 4. Did you, in October, 1866, bring to Charlestown, Mass., in the "Mary D. Haskell," a cargo of coal; if you did, to whom was it consigned, and where was it unloaded?

Ans. I did bring such a cargo in October, 1866. It was unloaded at Oakman & Eldridge's wharf; it was consigned to Oakman and Eldridge.

Int. 5. Did you or not wait for a berth in which to unload; if so, how long did you wait, and on which side of the dock did you discharge?

(Objected to as leading.)

Ans. I waited for a berth; I don't recollect particularly how long; I

think it was two days. I discharged on the south side of the dock, I should say. I couldn't say certain whether it should be called the south side or west side; it was on the southern and western side.

Int. 6. State whether or not while you were in this place discharging you saw the schooner "Bowdoin" haul into a berth to discharge:

Ans. I did.

Int. 7. On what day of the week did she haul in?

Ans. On Sunday.

Int. 8. How long had she been waiting at the wharf for a berth before she so hauled in?

Ans. I think three or four days.

Int. 9. While the "Mary D. Haskell" was waiting, how near did she lie to the "Bowdoin?"

Ans. She lay alongside of us one day; and her bowsprit lay
88 right across our stern the remainder of the time till she hauled into the dock.

Int. 10. On which side of the dock was the berth that the "Bowdoin" hauled into?

Ans. On the northern and western side. I meant on the northern and eastern side; I don't know exactly how the docks lie there.

Int. 11. Had you any conversation with the master of the "Bowdoin," while he was hauling in, about the berth he was going into? If you did, state what it was.

(Objected to, the master of the "Bowdoin" not having been examined on this point; also as immaterial and irrelevant.)

Ans. I had. I told the captain that he must haul his vessel up the dock as far as he could go.

Int. 12. Where were you and he when you told him this?

Ans. I was on the "Bowdoin's" deck.

Int. 13. How came you to be there?

Ans. I was helping him heave in past our stern.

Int. 14. How came you to tell him what you said?

(Objected to as incompetent and immaterial.)

Ans. He asked me if I knew anything about the berth; where he was to go.

(The conversation of the captain of the "Bowdoin" objected to, he not having been examined on this point.)

Int. 15. State whether or not you gave him any reason why he must go as far as he could. If so, what reason did you give him?

(Objected to as incompetent and irrelevant, and for form as leading.)

Ans. I did give him reasons, what I learned from the dockmen and from Captain Veasie, whose vessel lay in the berth. I don't recollect the vessel's name. (To second part.) Reason? I expected to take the berth myself, and made inquiry about it. [The captain of the brig and the dockmen told me that if a vessel did not lay ahead, she would lay across the bank, and injure the vessel.]

(Part in brackets objected to as irresponsive, incompetent, and immaterial.)

Int. 16 Why did you not take that berth?

(Objected to as immaterial.)

84 Ans. My orders was to discharge where my vessel lay, after laying a day.

Cross interrogatories put by Mr. Lathrop, and answers thereto.

Cross-int. 1. On what day of the month did you come to the wharf of Oakman & Eldridge?

Ans. I don't recollect particular. I think it was about the 22d of October, 1866, the 20th or 22d; perhaps not later than the 20th.

Cross-int. 2. Was the "Bowdoin" at Oakman & Eldridge's wharf when you arrived?

Ans. I think not; I think she came in the next day.

Cross-int. 3. Do you remember certainly whether she came in before or after you did?

Ans. She came in after we did, alongside of us. The reason I didn't answer that question correctly is, that I think Oakman and Eldridge own two wharves there, and she might have been at the other wharf. There were several vessels lay abreast there.

Cross-int. 4. How far apart are these two wharves that you speak about?

Ans. The width of the dock. I understand that he owns those two wharves.

Cros-int. 5. How wide is the dock that separates the two wharves?

Ans Well, I should say it was eighty feet—seventy or eighty.

Cross-int. 6. There are two berths at each wharf, are there not, an upper and a lower berth?

Ans. There is at one. The other I don't know certain about, whether there is a chance to discharge coal or not at the second berth.

Cross-int. 7. At which wharf is there an upper and a lower berth; and which is the one you don't know certainly about?

Ans. At the northern and eastern wharf, there is two berths. (To last part:) The southern and western.

Cross-int. 8. To which wharf did you go when you went in; and how far from the lower end of this wharf did you lie?

Ans. To the southern and western wharf. I lay just in by the end—the length of the vessel.

85 Cross int. 9. Did your bow or stern lie nearest the lower end of the wharf?

Ans. The stern.

Cross-int. 10. How far from the end of the wharf was your stern?

Ans. The stern came out by, some, when they were at work at the forward hatch, partly unloaded—some eight or ten feet.

Cross-int. 11. Was your vessel in this position on Sunday when the "Bowdoin" hauled in?

Ans. Yes, sir.

Cross-int. 12. Did you stay on the "Bowdoin's" deck after she got by your stern?

Ans. I stayed on her deck till she was alongside—alongside my vessel.

Cross-int. 13. How long a time, altogether, were you on the "Bowdoin's" deck at that time?

Ans. I should think it might have been an hour.

Cross-int. 14. Were you an hour in hauling her by your stern?

Ans. I should think we were.

Cross-int. 15. On what part of the deck of the "Bowdoin" were you standing?

Ans. Most of time I was on the forecastle deck, helping heave the vessel into the dock.

Cross int. 16. When did you leave the "Mary D. Haskell?"

Ans. I left her the 12th of November, 1866, at Cow Bay.

Cross-int. 17. After you left the "Bowdoin" when she was alongside your vessel hauling in, were you again aboard the "Bowdoin" that day?

Ans. No, sir.

Cross-int. 18. Did you have any further conversation with the captain of the "Bowdoin" that day, after you left him?

Ans. I did not.

Cross-int. 19. Did you remain on the deck of your vessel that day, after you went aboard from the "Bowdoin;" and if so, how long?

Ans. I couldn't tell, sir, how long I remainded on deck; but probably not long. I went below.

Cross-int. 20. About how long, to the best of your recollection?

86 Ans. I don't recollect whether I went direct below and then came on deck, or whether I stopped on deck.

Cross-int. 21. Do you recollect how long you remained below?

Ans. I do not. I was up and down often during the afternoon.

Cross-int. 22. Were you on deck that afternoon after the "Bowdoin" had made fast to the wharf, and had got into her berth?

Ans. I was.

Cross-int. 23. Where were you that evening?

Ans. I was on board of my vessel, sir.

Cross-int. 24. (De bene.) Can you swear, as a matter of recollection, that you said anything more to the captain of the "Bowdoin" about hauling his vessel ahead, than that he had better haul his vessel as far up the dock as he could?

Ans. I gave him my reasons. I told him he had better haul his vessel ahead, and gave him my reasons why he had better haul her ahead.

Cross-int. 25. (De bene.) Can you swear, as a matter of distint recollection, that you gave him your reasons?

Ans. I can.

Cross-int. 26. (De bene.) Now state precisely what you said to him, without reference to what you had said before.

Ans. I told the captain that he had better haul his vessel ahead, for I understood from the dockmen and the captain of the brig, that if a vessel was not hauled ahead, it would lay across the bank—if they were not hauled up as far as they could go.

Cross-int. 27. (De bene.) On what part of the "Bowdoin's" deck were you when you said this; where was the captain of the "Bowdoin," and who else was near you; and if any one, how near was he?

Ans. I think I was about amidships, and the captain was on the forward part of the quarter. Capt. Barbour, master of the brig "C. B. Allen," stood near. [He is now master of the "Mary D. Haskell."] He might have been four to six feet from me; I can't tell exactly. (Part in brackets to a verbal inquiry by Mr. Lathrop.)

Cross-int. 28. (De bene.) How far was the captain of the "Bowdoin" from you at the time inquired of in the last interrogatory?

Ans. Perhaps twenty feet.

Cross-int. 29. What was he doing all the time?

87 Ans. Well, I don't. He wasn't doing anything at that minute. I was just going to leave his vessel—Capt. Barbour and I, and he made some inquiry about the dock.

Cross int. 30. Are you or Capt. Barbour now, or have you ever been, connected in any way, in business or otherwise, with either of the respondents in this case?

Ans. Nothing more than by bringing cargoes to them.

Cross-int. 31. How long have you been engaged in bringing cargoes to the respondents?

Ans. I never have particularly engaged with them, more than with

other parties. It is about six years since I brought them the first cargo, and I have brought them two cargoes since.

Cross-int. 32. Have you brought them a cargo since November, 1866?

Ans. I have not.

Cross-int. 33. (De bene.) When was it you obtained the information from Capt. Veazie and the dockmen, about the state of the dock?

Ans. At the time I was there in the vessel—in the "Mary D. Haskell."

Cross-int. 34. How many days after arrival was it before you obtained this information?

Ans. The next day.

Cross-int. 35. How often and when have you been in Boston since November, 1866?

Ans. I have been here some five or six times. I came the 2d day of January, 1867; then I think I came up again in April and in May; then I came again in August. I don't know but I have been here oftener than that. I think I was here some two or three times in August. I was here in September and in October.

Cross-int. 36. When did you first inform Mr. Oakman about the conversation you had with the master of the "Bowdoin?"

Ans. I never informed Mr. Oakman anything about it.

Cross-int. 37. Have you not talked with Mr. Oakman about the conversation above inquired of, or about the testimony you would give in this case?

Ans. I never have seen Mr. Oakman since discharging the
88 cargo I spoke of until this morning, at 11 o'clock, I think, or a little past eleven.

Cross-int. 38. Did you have any conversation with Mr. Oakman about your evidence this morning, before your deposition was begun?

Ans. Yes, sir.

Cross-int. 39. Do you know how you came to be called as a witness in this case?

Ans. I do not.

Cross-int. 40. Have you told any one about the conversation you had with the captain of the "Bowdoin;" and, if so, who is he, when was it, and where?

Ans. I have no recollection of ever naming it to anybody.

Cross-int. 41. Where is Captain Barbour now; what vessel is he now in command of, if any, and between what ports does he usually ply?

Ans. He is in command of the "Mary D. Haskell" now. He sailed from Aspinwall the 29th of October, for Nevassa.

Cross-int. 42. Do you know Captain Veazie's full name, and where he now is, and of what vessel he was then master?

Ans. (To each of said questions.) I do not.

Re-direct interrogatory put by Mr. Dodge, and answer thereto.

Int. 17. Did you or not, before you left the berth in October, hear that the "Bowdoin had been injured in her berth?

(Objected to as immaterial.)

Ans. Yes, sir; I did. I heard it the next morning.

ASA G. HASKELL.

89 Deposition of AMMIEL COLMAN, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, April 6 and 7, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business; also, what has been your business heretofore.

Ans. Ammiel Colman; North Somerville; foreman of a wharf—"Caswell's wharf;" my business heretofore has been shipmaster.

Int. 2. How long have you been foreman of Caswell's wharf, and in whose employment have you been there?

Ans. About three years and a half; I have been in the employment of Messrs. Oakman & Eldridge there.

Int. 3. How many berths for vessels to unload are there at that wharf?

Ans. Five side berths and two end, at the two wharfs.

Int. 4. Is there a dock between the two wharfs called Caswell's wharfs?

Ans. There is.

Int. 5. How many berths on the easterly side of this dock?

Ans. Two berths.

Int. 6. Do vessels ever unload at the end of the wharf on the easterly side?

Ans. They do.

Int. 7. Do you mean, then, "two berths" with, or without, this berth at the end of the wharf?

Ans. Two berths without.

Int. 8. Is there anything to mark the division between these two berths? If so, what?

(Objected to as incompetent and immaterial.)

Ans. These two side berths? A jog.

Int. 9. How deep is the jog, and which berth, the upper or lower, jogs out beyond the other?

90 Ans. Four feet; the upper jogs out.

Int. 10. How long is the wharf from this jog to the head of the dock?

Ans. One hundred and twenty-five feet.

Int. 11. Of what material is this part of the wharf built?

Ans. Of stone and earth.

Int. 12. Of what is its face built?

Ans. Stone, and piles outside of the stone.

Int. 13. How near together are these piles, and how are they placed?

Ans. Ten foot apart; in a raking position, about two foot and a half rake: they tumble in from the bottom—in towards the top, about two foot and a half more in at the top than at the bottom.

Int. 14. Has the stone wall of the wharf a perpendicular face?

Ans. It has not.

Int. 15. How much does it slope?

Ans. Two feet and a half, the same as the piles.

Int. 16. Did the schooner "Bowdoin" unload at this wharf in October and November, 1866?

Ans. She did.

Int. 17. Do you know on what day of the week she hauled in?

Ans. I do; Sunday.

Int. 18. Where was she lying on Saturday evening, before she hauled

in on Sunday, and how long had it been since she arrived at Caswell's wharves?

Ans. She laid at the end of the dock; she arrived the Tuesday previous.

Int. 19. What was her cargo; at which of the berths was she to unload, and why had she been waiting?

Ans. Her cargo was coal; at the upper berth, east wharf, in the dock between the two wharves; waiting for another vessel to be discharged first.

Int. 20. What vessel was that, and at which berth did she discharge, and what cargo had she?

Ans. The schooner "Daybreak;" she discharged at the upper berth, east wharf, in dock; she had coal.

91 Int. 21. Was the "Daybreak" the only one that the "Bowdoin" waited for?

(Objected to, for form and substance.)

Ans. She was.

Int. 22. Was or was not the "S. P. Smith" unloading in that berth when the "Bowdoin" arrived?

(Objected to, for form and substance.)

Ans. I don't exactly recollect now; she might have been; I don't call to mind.

Int. 23. Did you give either of the officers of the "Bowdoin" any instructions as to the place where he was to haul his vessel to unload? If you did, to which of the officers? When? Where were you and he at the time, and what did you tell him? Tell the whole story.

(Objected to, so far as calling for statements made to any officer but the captain.)

Ans. I did; the mate, the first officer of the vessel. It was about six o'clock Saturday evening, at the upper east berth, beside of the bulkhead to the coal run. I asked him if he was going to haul in on the morrow, Sunday; if he did so, to haul his vessel, the after part of his main hatch opposite a certain post in the bulkhead, the coal stage resting on top of this run, on an angle. I told him when this was swung square he would be about right. I told him not to be afraid of going ahead; his jib-boom would probably lie over the wall; he could slack up his head gear. This is about all.

(So much of said answer as contains statements and directions given to mate objected to as incompetent and immaterial.)

Int. 24. How near to the post you speak of were you and the mate standing at the time of this conversation?

Ans. My hand on it; the mate was close by.

Int. 25. Which of the officers of the "Bowdoin" seemed to be mostly in charge of her while she was waiting, if one seemed in charge more than another?

(Objected to as incompetent and immaterial; also for form.)

Ans. The mate or first officer.

Int. 26. Do you or any one of the persons connected with or employed on that wharf remain there on Sundays?

(Objected to.)

92 Ans. We do not.

Int. 27. When next, after giving the instructions to the mate, as you have stated, did you see the "Bowdoin?"

Ans. Monday morning, at seven o'clock.

Int. 28. Where was she then?

Ans. She was at the east berth, partly hauled in to the berth, and listed off to port.

Int. 29. Was or not she in the place at which you directed her to be placed? If not, how far from it, and which way from it?

Ans. She was not at the place I directed her; twenty feet short of it, astern of the place.

Int. 30. How much, if any, was her stern below the jog in the wharf which divides the upper from the lower berth?

Ans. Twenty to twenty-five feet; twenty to twenty-four feet; the difference between the keel and the taffrail.

Int. 31. In what condition was she?

Ans. She was somewhat strained.

Int. 32. Where was she unloaded?

Ans. In that berth, twenty feet ahead of where she then lay.

Int. 33. Was she hauled ahead before commencing unloading?

Ans. She was.

Int. 34. What time of tide was it when you first saw her on Monday? Was she then on the ground or floating?

Ans. The tide was about two-thirds out, I should suppose. She was on the ground.

Int. 35. Describe the stage you have spoken of as to its form, size, and use.

Ans. It was used for wheeling coal from the vessel to land it on the run; about twenty-five feet long, six feet wide.

Int. 36. Describe what you mean by the run.

Ans. The run is a place built up to land the stage on, and dump coal from, or to wheel coal from the stage along on it.

Int. 37. How near to the upper end of this run did the main hatch of the "Bowdoin" come, after she was moved ahead to unload, as you have said?

Ans. About ten feet.

93 Int. 38. How was the "Bowdoin" after being moved ahead, in relation to the position in which the "Daybreak" had been unloaded?

(Objected to as incompetent and immaterial.)

Ans. She was in just about the same position.

Int. 39. You say the stage had been swung 'round. How did this happen, and for what had it been last used?

Ans. We swung it 'round to make it lay on the run safely. It had last been used for discharging the schooner "Daybreak."

Int. 40. Did you move this stage before you moved the "Bowdoin" ahead? If you did, how much, which way, and for what purpose?

Ans. We did. We thought of taking coal out before we hauled her ahead; but the main hatch being off so far, the stage wasn't hardly long enough, and we gave up the idea. We moved the stage down the wharf on the run; slided it on the run,

Int. 41. Why were you going to try to take coal out before moving the vessel ahead?

Ans. We thought that it might ease the vessel.

Int. 42. Have you ever, while you have been on that wharf, unloaded any vessel in the place where the "Bowdoin" was lying Monday morning?

(Objected to as incompetent and immaterial.)

Ans. I have. Where I first found her Monday morning? I have not.

Int. 43. Have you ever known one to be unloaded there? I mean at the place where you found her Monday morning?

(Objected to as incompetent and immaterial.)

Ans. I have not.

Int. 44. About how many vessels a year, since you have been on that wharf, have unloaded in that upper berth, at the place where you directed the "Bowdoin" to be placed, and what class of vessels?

(Objected to as immaterial.)

Ans. Twelve to fifteen a year; about three hundred to three hundred and fifty tons' capacity.

Int. 45. About how many tons, new Government measurement, would a vessel of three hundred tons' capacity be, ordinarily?

(Objected to, witness not having been shown to be an expert.)

Ans. About two hundred and twenty-five, or two hundred and thirty.

94 Int. 46. What, in your judgment, caused the injury to the "Bowdoin?"

(Objected to as incompetent and immaterial, and also because witness has not been shown to be qualified to judge.)

Ans. In not hauling where she was directed to by the wharfinger.

Int. 47. Was there a pile of coal off the wharf, near the jog of which you have spoken? If so, how much, and how long had it been there, and how came it there, when the "Bowdoin" was injured?

Ans. There was; about five tons, in my estimation. It came there by breaking out of the bulkhead; it had been there about a week.

Int. 48. How far from the jog was that part of the pile of coal which was farthest from it?

Ans. Twenty-seven feet.

Int. 49. And that part which was nearest to it?

Ans. The coal extended about fifteen feet, from the upper side to the lower; twelve feet from the jog to the lower part of the coal.

Int. 50. Do you speak of the top or the bottom of the coal when you say it extended fifteen feet?

Ans. The lowest part of the coal I could see.

Int. 51. How deep was the pile of coal in the deepest place?

Ans. About a foot and a half.

Int. 52. Where was the deepest place?

Ans. Nearest the wharf.

Int. 53. What kind of coal was this?

Ans. Furnace coal, anthracite coal.

Int. 54. What kind of furnaces was it designed for?

Ans. House-furnace coal; about the size of your fist; about the size of a working man's fist.

Int. 55. How many vessels before the "Bowdoin" had unloaded in that upper berth, after the coal was in the dock?

(Objected to as immaterial and incompetent.)

Ans. Two.

Int. 56. How did they compare in size and length with the "Bowdoin?"

Ans. About the same capacity; in length, two to five feet shorter, I should suppose.

95 Int. 57. Has that coal ever been removed from the dock, or anything done to it?

Ans. It has not.

Int. 58. How many vessels have unloaded in that upper berth since the "Bowdoin?"

(Objected to as incompetent and immaterial.)

Ans. Some eight, as nigh as I can recollect, more or less; it may be more.

Int. 59. How did they compare in size and length with the "Bowdoin?"

Ans. Some smaller, and some about her capacity, and about her length.

Int. 60. Was there or not a vessel spent the last winter in that berth?

(Objected to as immaterial.)

Ans. There was.

Int. 61. What was her name, capacity, and length, and what had she on board, if anything?

Ans. Her name was the "William Paxton;" I don't know her exact capacity and length; I should suppose she had a capacity of about three hundred tons. She had on board a part cargo of stuff to make glue; I forget what they call it.

Int. 62. How did she compare in length with the "Bowdoin?"

(Objected to as incompetent and immaterial.)

Ans. She might have been a little shorter than the "Bowdoin;" I don't know whether she was or not.

Int. 63. State whether or not all vessels unloading in that upper berth unload with the main hatch at the place where you directed the "Bowdoin's" main hatch to be placed.

(Objected to as incompetent and immaterial, and for form.)

Ans. That's according to the size of the vessel; a smaller vessel's hatch would be farther ahead.

Int. 64. Is or not the main hatch ever placed lower down?

(Objected to for form and substance.)

Ans. It might be, but it is not often the case.

Int. 65. State whether or not vessels as large as the "Bowdoin"
96 ever lie any farther astern, while unloading, than the place where you directed the "Bowdoin" to be placed.

(Objected to as incompetent and immaterial, and for form.)

Ans. They do not.

Int. 66. After the "Bowdoin" was moved ahead twenty feet, as you have said, how was she then, as to the place in which you directed her to be placed?

Ans. About the same as I directed her.

Int. 67. In your judgment, was the dock in which the "Bowdoin" was unloaded safe or unsafe for her to lie in?

(Objected to, witness not having been shown to be an expert.)

Ans. I consider it a safe dock.

Int. 68. Did she suffer any injury there?

(Objected to as incompetent and immaterial.)

Ans. She did not, as far as my knowledge goes.

Int. 69. Did she leak while there?

Ans. She did not.

Int. 70. State whether or not any vessel to your knowledge ever suffered any injury there, either before or after the coal fell off the wharf?

(Objected to as incompetent and immaterial.)

Ans. I know of none.

Int. 71. On what day, and at what time of day, did the "Daybreak" go out of her berth?

Ans. About ten o'clock, on the forenoon of Saturday, the 27th.

Int. 72. Why did not the "Bowdoin" immediately come in?

Ans. They got belated in the tide, so her stern swung down.

Int. 73. Had you, before telling the mate the exact place where to haul in, had any conversation with the captain of the "Bowdoin," as to the berth where he was to unload?

Ans. Only telling him that was the berth they should unload in.

Int. 74. Exactly what did you tell him?

Ans. That I couldn't say, now.

Int. 75. I do not mean the exact words. I wish you to state the substance of what you told him.

(Objected to for form.)

97 Ans. Well, that was his berth, where the "Daybreak" lay and discharged.

Int. 76. Where was the "Daybreak" when you told him this?

Ans. Lying at her berth, discharging; upper berth, east wharf, in dock.

Int. 77. Had you any talk with the mate of the "Bowdoin," on Monday, as to why he had not put the vessel where you told him to?

(Objected to as incompetent and immaterial.)

Ans. I asked him why he didn't haul further ahead, and he said, "I told the captain the vessel was not so far ahead as you told me;" that's about all the conversation.

Int. 78. Had you any talk on Monday with the captain of the "Bowdoin," as to why he had not gone farther ahead.

(Objected to as incompetent and immaterial.)

Ans. I did. He remarked that he should have to slack up his head rigging, and thought it wasn't necessary to unrig a vessel in order to come into a dock; I remarked, it was a common thing to slack up what we call the backropes to the martingale, to let his jib-boom come up over the wall of the wharf; and that it was not only common to do that, but it was customary in some places to rig in the jib-boom, if necessary.

Int. 79. Did he give you any other reason than that for not going further ahead?

(Objected to as incompetent and immaterial.)

Ans. I don't remember of any particular reason.

Int. 80. Did you, after the "Bowdoin" hauled out of the berth, examine the keel track where she had lain to unload?

Ans. I did.

Int. 81. After the "Bowdoin" had hauled ahead twenty feet, as you have said, how did her taffrail come, as to the jog in the wharf, and how her keel?

Ans. Her keel—the after part of the keel—was about opposite the jog; the taffrail was about three feet below the jog, or whatever might be the rake of the stern.

Int. 82. When, and at what time of tide, did you examine the keel-track?

Ans. At pretty near low water; some few days after the "Bowdoin" went out; I couldn't just recollect the date, or week.

98 Int. 83. Do you remember whether it was at a time of high, or low, or medium tides?

Ans. I do not.

Int. 84. What means of examination did you use?

Ans. A boat and pole, with a measure to measure the feet.

Int. 85. State whether or not you found coal in the keel track.

Ans. I did not.

Int. 86. With how much particularity did you examine it?

Ans. From where the "Bowdoin's" stern lay, about two-thirds of the way up, I examined with a pole along.

Int. 87. What part did you do? Did you use the pole or propel the boat?

Ans. I managed the oar to propel the boat; Mr. Mulliken, who was with me, used the pole.

Int. 88. How do you know what Mulliken found with the pole?

Ans. By hearsay and measurement; measuring afterwards.

Int. 89. How do you know whether or not he found coal in the keel track?

Ans. I was observing him from time to time.

Int. 90. Did you move up the keel track quickly or slowly? Did you examine thoroughly or slightly?

(Objected to for form.)

Ans. Slowly; I think thoroughly.

Int. 91. Could you or not see the bottom beside the keel track opposite the pile of coal?

Ans. Yes.

Int. 92. How far out towards the keel track did the coal extend?

Ans. Very near it; scattering.

Int. 93. How thick was it near the keel track? Describe it.

Ans. Scattered along, now and then a piece of coal; very thinly.

Int. 94. How far up the keel track did you go before you could see the bottom of it?

Ans. The length of the boat from where we commenced—from where the vessel lay; we began at the end towards the sea.

Int. 95. How was it about seeing the bottom of the keel track opposite the coal?

Ans. Not very plainly seen.

99 Int. 96. State how deep was the water over the scattering coal beside the keel track opposite the pile of coal?

Ans. About three feet of water at the time.

Int. 97. And how deep in the keel track opposite the pile of coal?

Ans. About four and a half feet.

Int. 98. State whether or not you yourself looked down into the keel track opposite the pile of coal.

(Objected to, for form.)

Ans. I think I did.

Int. 99. You have said that when you first saw the vessel, on Monday morning, she was heeled off from the wharf; state now whether her stern was twisted so as to heel over more than the forward part of her.

Ans. A slight difference.

Int. 100. How much difference at that time in her mastheads? how much did they appear to you to be out of line?

Ans. I didn't take particular notice of them; they were some little out of line.

Int. 101. Can you not state how much you mean by "some little?"

Ans. About a foot, at the head of her mast, from a foot to two foot out of line.

Int. 102. Now will you please explain fully what, in your opinion, caused this heeling over and twisting; state what, in your opinion, caused it, and your reasons for your opinion.

(Objected to, witness not having been shown to be an expert.)

Ans. The first cause was, she was not far enough into the berth where she should have been; not far enough ahead, and not breasted into the wharf; she was—her stern was—lying in deeper water than her bow was, and when she came to ground, her stern didn't have so much bearing as her bow, her bow being breasted in so near to the wharf that her keel struck the inside of the bed, which hove her off.

Int. 103. State whether, in your opinion, the pile of coal had caused her to heel off, or twist, and give your reasons for your opinion.

(Objected to, witness not having been shown to be an expert.)

Ans. I don't think it did; for the reason that I think she heeled off before she touched the pile of coal; I don't think she ever touched the pile of coal; she didn't get near enough to the wharf.

Int. 104. What makes you think she never touched the pile
100 of coal? Was there anything about the appearance of the coal from which you could judge?

Ans. By its lying so lightly in the mud, as though it had not been pressed at all.

Int. 105. How many years were you shipmaster, and how many a mariner?

Ans. About eighteen years shipmaster; about thirty years from the time I commenced going to sea till I left off.

Int. 106. Before the coal fell into the dock, what was the form of the bottom from the wharf out to the keel track, level, or how otherwise?

Ans. It was higher inside than it was out, curving somewhat like a vessel's bottom.

Int. 107. How much higher close to the wharf than out by the keel track, as nearly as you can judge?

Ans. Well, about two feet.

Int. 108. What kind of a place for safety was the end of the wharf where the "Bowdoin" was, before she came in; what danger, if any, was there in lying there?

Ans. Safe place; no danger; a vessel could lie there with safety most any time.

Int. 109. How early in the week might he have come into the dock, if he had chosen to?

(Objected to for form and substance.)

Ans. He might have come on Friday morning.

Cross-examination.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. Where are the five side berths you have mentioned?

Ans. Four of them are in the dock, between the two wharfs, the two Caswell's wharfs; one the east edge of the east wharf, next the navy yard.

Cross-int. 2. Is the bulkhead which you call the run the same size now and in the same place that it was in October and November, 1866?

Ans. Yes.

101 At 4 o'clock the hearing was adjourned until 10 o'clock, to-morrow, April 7th, at the same place.

Tuesday, April 7th, 1868, 10 o'clock a. m. The hearing was resumed pursuant to adjournment.

Cross-int. 3. How long is said bulkhead, how high, and how much space is there between it and the edge of the wharf?

Ans. I never measured it; well, the whole thing may be from eighty to a hundred feet; it is about fourteen feet high, above the wharf; below the jog, the posts that support the bulkhead rest against the cap-sill of the wharf, above the jog, about four feet from the edge of the wharf; I should think.

Cross-int. 4. How far below the jog does the bulkhead extend?

Ans. I have never measured it; I suppose it may be fifty or sixty feet.

Cross-int. 5. How far above the jog does the bulkhead extend?

Ans. Not measuring that, I suppose about forty feet; I can't tell exactly, it may be more and it may be less.

Cross-int. 6. On the top of this bulkhead there is a platform running the entire length of it, is there not, from which coal, when taken out of a vessel, is dumped into the space behind the bulkhead?

Ans. There is a platform for wheeling on top—it runs the entire length.

Cross-int. 7. And the movable stage you speak of can be taken to any point on this platform, can it not?

Ans. It can.

Cross-int. 8. Can you tell the number of posts in the bulkhead, and how far apart they are?

Ans. I cannot tell the number, they are about ten feet apart.

Cross-int. 9. Now where was the post you say you put your hand on, when talking to the mate, on the Saturday afternoon you have spoken of?

Ans. The second post from the upper end.

Cross-int. 10. (De bene.) Do you consider that a jog in a wharf always marks the division between berths?

Ans. As a general thing— a wharf built in that way.

102 Cross-int. 11. (De bene.) A wharf built in what way?

Ans. A wharf built jogged out, the upper berth narrower than the lower.

Cross-int. 12. (De bene.) Did you never see a vessel lying at a wharf opposite the jog in a wharf?

(Objected to for indefiniteness.)

Ans. I don't know that ever I did—a wharf built in that way.

Cross-int. 13. Why do you qualify your answer by saying, "a wharf built in that way?"

Ans. One berth above another—one berth terminated by a jog.

Cross-int. 14. Now will you answer the question, whether you have never seen a vessel lying opposite the jog in a wharf?

Ans. I don't think I have.

Cross-int. 15. Describe how the coal happened to run out of the bulkhead into the dock?

Ans. Weakness of the bulkhead.

Cross-int. 16. What gave away?

Ans. A post, first; then the boards followed.

Cross-int. 17. Did the post break, and where?

Ans. It broke about a third of the way up.

Cross-int. 18. How much of an aperture was made by this post and boards breaking?

Ans. About twenty feet—fifteen to twenty feet long, and six or seven feet high.

Cross-int. 19. Were these boards, for the space of fifteen to twenty feet long and six or seven feet high, all carried away; and, if not how was it?

Ans. They were burst off, each end started, and the lower part came out, tunnel like.

Cross-int. 20. Did all the coal that was back of this broken place in the bulkhead run out?

Ans. It did not.

Cross-int. 21. How did you prevent it going out?

Ans. It stopped of its own accord—not being a large quantity in it.

Cross int. 22. You mended up the bulkhead, then, did you not?

103 Ans. We did not mend the bulkhead, but we afterwards walled the coal, by pieces of timber.

Cross-int. 23. Has nothing been done to the bulkhead, from that day to this?

Ans. Nothing—nothing special, nothing by the way of repairs; some more boards may have been taken off since.

Cross-int. 24. When was this wall built up inside?

Ans. Commenced the day of the break-out, the morning after the break-out—it broke out during the night.

Cross-int. 25. You cleared away the coal that was on the wharf in front of the break, so that you could pass between the bulkhead and the cap-sill of the wharf, did you not?

Ans. After a while, and nailed a board or boards on the cap-sill, to keep it from running overboard any more.

Cross int. 26. When did you clear away this coal that was on the wharf.

Ans. I don't remember the time exactly; as soon as it was convenient to do so.

Cross-int. 27. In a day or two after the break, was it not?

Ans. I couldn't remember justly; about that.

Cross-int. 28. In the thirty-first direct interrogatory, you are asked to state the condition of the vessel, and you say she was somewhat strained; is this all you can say about her condition?

Ans. Somewhat strained, that's the way I found her, and lying in a bad position. Yes; it is all I can say of her condition.

Cross-int. 29. How many hatches had the "Bowdoin," and what were they?

Ans. Two hatches; I should call them main and after hatch.

Cross-int. 30. Where was the main hatch situated?

Ans. Between the two masts.

Cross-int. 31. There would have been no difficulty in getting the coal out of the "Bowdoin," where she first lay, if she had been upright instead of being heeled over.

Ans. There would have been some, being so far from the wharf.

Cross-int. 32. If she had been upright, and at the proper distance from the wharf, she could have unloaded where she first was, could she not?

Ans. She could, I think.

104 Cross-int. 33. Did you not testify, at the trial of this case in the district court, that you had no conversation with the captain as to where he was to haul his vessel, and that your only directions were given to the mate?

Ans. I think I did.

Cross-int. 34. When you examined the keel track from the boat, you sculled the boat, did you not?

Ans. I did.

Cross-int. 35. Did you examine the keel track below the jog; and if so, for what distance below it?

Ans. We examined the keel track where her stern lay, when she had hauled into the berth where we discharged her; about there; I couldn't tell exectly; we might have gone a little below.

Cross-int. 36. Now, how far below the jog, if at all, can you testify you, or those in the boat with you, examined the keel track?

A. I can't remember now how far.

Cross-int. 37. Can you tell any of the measurements you then made?

Ans. I think I can, nearly.

Cross-int. 38. Mr. Oakman, the defendant in this case, was in the boat with you and Mulliken at this time, was he not?

Ans. I forget about that; whether he was or not, I don't know.

Cross-int. 39. How long was this boat you were in?

Ans. She might have been twelve to fifteen feet, I don't exactly recollect; a small boat.

Cross-int. 40. How far down the wharf did you carry the end of the movable stage that projected over the bulkhead, at the time you moved it, with the idea of unloading the "Bowdoin" where she first lay?

Ans. About twenty feet.

Cross-int. 41. Did you not testify in the district court that you moved this end only ten feet?

Ans. I don't remember.

Cross-int. 42. At the time this stage was run in from the "Daybreak," was not the outer end swung 'round, so as to be farther down the wharf than before?

Ans. It was.

Cross-int. 43. How much further down.

Ans. About ten feet, I should say.

105 Cross-int. 44. Then this end was not carried more than ten feet, was it, when you afterwards moved it, with the idea of unloading the "Bowdoin," where she first lay?

Ans. In that other question you asked about the stage, I made a mistake; I thought you meant the whole stage moved bodily from where the other vessel was discharged, from where it would be when swung square; I think it was moved about ten feet; I mean that outer end.

Cross-int. 45. Were you on the wharf at the time Captain Frazar, Mr. Swett, Captain Paine, and Captain Elliott, took soundings of the keel track from a boat.

Ans. I think I was about there.

Cross-int. 46. Did you, or not, have some conversation with Captain Frazar?

Ans. I might have had.

Cross-int. 47. Didn't Captain Frazar ask you if the captain had been warned of his danger.

Ans. I don't recollect, at this time, whether he did or not.

Cross-int. 48. Are you the person called the wharfinger of that wharf?

Ans. Wharfinger or foreman; I suppose some would call me wharfinger; I have charge of the wharf; some call me wharfinger, some foreman.

Cross-int. 49. There is no other wharfinger, is there?

Ans. No.

Direct examination resumed.

Interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 110. As the movable stage was lying, after the "Daybreak" went out, and until it was moved down the wharf, on Monday morning, did or not any part of it project over that side of the bulkhead which was toward the dock?

Ans. I think the corner might have projected over.

Int. 111. Do you mean that it did; if yes, how much?

Ans. I should say it did project; most commonly, when the stage is hauled in, the end projects, lying cross-wise with the other. I can't say how much; I can't give a judgment just how much it was.

106 Int. 112. Was it a few feet, or a few inches?

Ans. It might have been a matter of two or three feet.

Int. 113. Was the boat of the "Bowdoin" injured, while the "Bowdoin" laid at the end of the pier; if so, how did it happen?

Ans. It was injured, and happened in this wise: the mate then having charge of the "Bowdoin," I told him that I wanted to get a vessel out of the dock, and he must slack ahead, or he would probably get his boat injured; I repeated it to him. He answered that he had slacked all he was agoing to; he had been slacking, and would slack no more; I supposed I had done my duty in the matter, and if his boat got injured it would be his own fault; I had proof enough there that I had warned him. I considered it the mate's fault that the boat was injured, in not doing his duty.

Int. 114. Had you or not, a spar fender lying in the dock, for the use of vessels; if yes, where was it lying?

Ans. We had; I think it was lying at the time across the head of the dock, as far as I recollect.

Int. 115. Where was it on Monday morning, when you first saw the vessel?

Ans. I think it was at the head of the dock then; I don't justly recollect in what position.

Int. 116. Was there any other spar fender in the dock than this?

Ans. I think not.

Cross-examination resumed.

Additional cross-interrogatories by Mr. Lathrop, and answers of the witnesses thereto.

Cross-int. 50. How long was this spar fender which lay across the head of the dock?

Ans. From forty to fifty feet, I should judge.

Cross-int. 51. It was fastened at one end to the west wharf, was it not?

Ans. That I do not recollect.

Cross-int. 52. Was it not usually so fastened?

Ans. As often as any way; sometimes to one wharf, sometimes to the other.

107 Cross-int. 53. Usually fastened by one end, was it not, and the other swinging free?

Ans. As a general thing.

AMMIEL COLMAN.

Deposition of NATHAN C. MULLIKEN, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, April 7, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. Nathan C. Mulliken; my residence is Charlestown; they term me wharfinger at Gage's wharf; my business is to see to loading ice, entirely.

Int. 2. How long have you been wharfinger at Gage's wharf?

Ans. Eighteen years. I have been at the wharf twenty, and wharfinger eighteen years.

Int. 3. State whether, in the fall of 1866, you saw the schooner "Bowdoin" at Oakman & Eldridge's wharf, Charlestown; and if so, on what day or days did you see her?

Ans. Yes, sir, I saw her. The 29th of October, the first time I saw her. It was on Monday, I think, the 29th, quite early in the forenoon. I saw her the next day after that—I think the next day.

Int. 4. Was she in the same position on the second day that she was on the first day; if not, what change had been made?

Ans. She was not in the same position; she had hauled ahead twenty-three to twenty-four feet. I couldn't tell exactly without taking a square to measure; but, to the best of my eye, I should think it was twenty-three to twenty-four feet.

Int. 5. After the "Bowdoin" had hauled out, did you make any examination of the berth in which she lay after she had been hauled
108 ahead as above stated by you; if you did, when, at whose request, and for what purpose did you make such examination?

Ans. I did make such examination. The next day after the vessel hauled away from the berth where she was discharged, at the request of Mr. Oakman, for the purpose of satisfying my own mind whether it was a safe berth for a vessel to lie in.

Int. 6. At what time of tide did you make this examination?

Ans. At as near low water as I could make it.

Int. 7. Did you or not sound out the keel track where she lay the second day; if you did, how deep did you find the water in it?

Ans. I did. The deepest was seven feet. The least water that I sounded was two. We went up as far as we could get with the boat; to the best of my judgment I should think to twenty feet astern of where her cutwater was; at this farthest point, we got two feet.

Int. 8. Was any part of the keel track bare of water at this time?

Ans. There was. I should think there was ten feet of it at the upper end.

Int. 9. Was there or not, so far as you could discover, any coal in this keel track?

(Objected to, for form and substance.)

Ans. I did not find any.

Int. 10. What, if anything, did you find in this keel track?

Ans. My pole found nothing but mud—soft substance; not seeing it I couldn't say it was mud.

Int. 11. Was the berth in which the "Bowdoin" was lying, when you saw her on the second day, safe or unsafe for her to lie in?

(Objected to.)

Ans. To the best of my judgment I should call it perfectly safe.

Int. 12. Did you notice a jog in the wharf when you saw the "Bowdoin" on the first day?

Ans. I did.

Int. 13. Where was it, in relation to her; that is, about how far from her stern?

Ans. That would be a matter of guess-work for me to answer, because I didn't measure it. I can get at it in another way, if that is a proper way. I can tell where she was the second day. The after part of the rudder stuck out six feet by the jog, where she lay the
109 second day; that would make her stern about twenty-six feet

below the jog, where she lay the first day, as she was hauled ahead twenty feet.

Int. 14. What, if anything, does such a jog in a wharf indicate to a person acquainted with wharfs, or with unloading vessels at wharfs?

(Objected to.)

Ans. To me it would indicate that there was a berth, separate berths, and I should think it would so indicate to any one else acquainted with that business.

Int. 15. What, if anything, in your judgment, would it indicate as to the safety or unsafety of laying a loaded vessel across it?

(Objected to.)

Ans. I don't know hardly how to answer that question; but I should suppose any captain hauling in, or anybody who had anything to do with a dock at all, would know enough not to lay a vessel right opposite to it?

Int. 16. Did you notice a pile of coal in the dock; if you did, did you form any opinion as to how many tons there were in it?

Ans. I did. I formed no opinion of the quantity at the time.

Int. 17. State whether you formed any opinion as to whether it would endanger the safety of the "Bowdoin," as she was on the second day. If you did, state what that opinion was, and your reasons for it.

Ans. When I went the second day, the vessel was lying in the berth, apparently very easy, about half tide; I saw nothing of the pile of coal to distress the vessel at all or to injure her in any way. The vessel was then aground, and perfectly upright. At the time I examined the keel track, I did not have the pile of coal in my mind at all, to be best of my recollection.

Int. 18. Can you remember whether or not you stuck the pole into the pile of coal, or touched it with the pole?

Ans. I recollect of sticking the pole into the pile of coal.

Int. 19. How did you find it, as to being solid or otherwise?

Ans. To the best of my recollection, in putting the pole into the coal it went through it into the mud.

Int. 20. Can you now recall enough of its appearance to give an opinion as to whether any vessel had ever rested upon it?

Ans. To the best of my recollection now, I formed an opinion
110 at the time that no vessel had ever rested on it to do any hurt, not enough to cause her to list off.

Cross-examination.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. The first day that you saw the "Bowdoin," did you go near her stern?

Ans. I can't say that I did.

Cross-int. 2. The second day you saw her, did you measure the distance the stern projected beyond the jog?

Ans. I did.

Cross-int. 3. Have you got that measurement now?

Ans. I have.

Cross-int. 4. Have you examined it lately?

Ans. I have.

Cross-int. 5. Have you it with you?

Ans. Yes, sir; I have.

Cross-int. 6. Will you please look at it, refresh your recollection by it, and then state the distance the stern lay beyond the jog the second day.

Ans. "End of rudder one bay from jog," that is all my book says, and the exact words; that bay is six feet; my eye and rule say that that bay was six feet.

Cross-int. 7. Now what do you mean by a bay?

Ans. What I call a bay is the distance between the piles in the wharf, six feet.

Cross-int. 8. When did you measure this bay that you now say is six feet?

Ans. Sometime within two or three days. I am not sure whether it was Saturday or Friday.

Cross-int. 9. Did you not testify in the district court at the trial of this case, that the stern was eight or ten feet by the jog, and the rudder abaft of that?

Ans. I think not, I am quite positive not.

111 Cross-int. 10. Can you swear that you did not?

Ans. I cannot.

Cross-int. 11. When was that entry made in the book which you have referred to in your answer to the sixth cross-interrogatory?

Ans. It was made the second day that I went to the vessel—the time I went to see how far she lay by the jog, and how far she had been hauled ahead.

Cross-int. 12. Are you sure that your soundings from the boat were made in the keel track, and not merely in the berth where the "Bowdoin" lay the second day?

Ans. Yes, sir; I am perfectly satisfied that I sounded in the keel track—perfectly.

Cross-int. 13. Did you measure from the top of the water to the top of the mud, or do your measurements refer to the distance from the top of the water down to the hard bottom?

Ans. I put my pole as deep down as I could get it, and then I took it from the end of the pole to the top of the water.

Cross-int. 14. You pushed your pole then through the soft mud, did you?

Ans. I don't calculate I pushed it through the soft mud in the keel track.

Cross-int. 15. Where, then, did you push it through the soft mud?

Ans. As I was going along up on the sides, poking the boat along, to keep her in the position I wanted her, to get at the keel track.

Cross-int. 16. You measured in two places in the keel track, did you—one where you found seven feet, and the other where you found two feet?

Ans. Yes, sir; I measured in two places—one where I found seven, and one where I found two.

Cross-int. 17. Was there any soft mud in the keel track?

Ans. I should say, no, sir; not any.

Cross-int. 18. (De bene.) How far from the keel track was the place where you pushed your pole through the coal into the mud?

Ans. It would be a matter of guess-work for me to say now.

Cross-int. 19. Have you any recollection whether it was one foot or twelve?

Ans. Well, as my chief business was to find the keel track, I
112 should think some three or four. It couldn't have been twelve, as I should have had no occasion to go that distance from the

keel track. I should think three to four. It would be most natural to be that, as I was in the bow of the boat.

Cross-int. 20. Was your object in pushing the pole through the coal to ascertain whether it was pressed, or did you merely push your pole in it to push the boat along?

Ans. To the best of my knowledge, to propel the boat along, or to move it into the position I wanted to get to.

Cross-int. 21. Is Gage's wharf built with a jog?

Ans. It is not.

Cross-int. 22. Who were in the boat with you when you sounded the keel track?

Ans. Mr. Oakman and Captain Colman.

Cross-int. 23. Your wharf (Gage's) is next to Mr. Oakman's, is it not?

Ans. It is—next to his west wharf.

Direct examination resumed.

Additional interrogatorry by Mr. Dodge, and answer of the witness thereto.

Int. 21. You say, in answer to the sixteenth cross-interrogatory, you measured in two places. Do you mean that you measured in only two places?

(Objected to, for form and substance.)

Ans. No, sir.

Cross-examination resumed.

Additional cross-interrogatories by Mr. Lathrop, and answers of the witness thereto.

Cross-int. 24. Were you ever an owner, or in any way interested in the dock where the "Bowdoin" was injured, or in either of the wharfs, at the sides of said dock?

Ans. No, sir; not the least.

Cross-int. 25. Have you a record of the soundings and measurements you made in the dock from the boat?

113 Ans. I have no record, and only answer from my memory.

Cross-int. 26. Can you now state in how many places you measured the depth of the water in the keel track?

Ans. I cannot state how many places. To the best of my recollection, every four or five feet, the whole length.

Cross-int. 27. Did you not state in the district court that you measured only where the stern, bilge, and bow had been, and that you found three feet at bow, three and a half at bilge, and six at stern?

Ans. I think I made no statement of the bilge at all. I think I called the judge's attention to the fact that I had nothing to do with the bilge. There seemed to be some misunderstanding at first about my statement at that time. I recollect now of calling the judge's attention to it.

Cross-int. 28. You don't think, then, you measured where her bilge had been, do you?

Ans. I don't think I measured where the bilge was, at all.

N. C. MULLIKEN.

Deposition of JOHN KEATING, a witness for libellees and appellants, taken April 9, 1868, before Charles F. Walcott, notary public.

Interrogatories by John C. Dodge, esq., in behalf of libellees and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. My name is John Keating; Charlestown; laborer.

Int. 2. Do you know the wharf at Charlestown, occupied in October and November, 1866, by the firm of Oakman and Eldridge as a coal wharf; and if yes, how long have you known it?

Ans. I do. I have known it between twelve and fourteen years.

Int. 3. How many berths or places for vessels to unload are there at the easterly wharf—I mean the wharf on the easterly side of the dock?

Ans. That is the next to the navy yard. There is but one on
114 the side next the navy yard. On the whole wharf there are two berths on the inside, one at the end, and one next the navy yard.

Int. 4. Have you been accustomed to weigh coal? If yes, how long have you been, and how much do you suppose you ever weighed?

Ans. I have been so accustomed. I have weighed coal, off and on, for five years. I can give you a rough estimate—probably twenty-five thousand tons.

Int. 5. Did you see the schooner "Bowdoin" at this wharf, in the fall of 1866? If you did, where at the wharf was she lying when you first saw her?

Ans. I did, sir; she was lying between the two wharfs.

Int. 6. Which side of the dock was she?

Ans. She was close to the wharf in question.

Int. 7. You have spoken of two berths for vessels to unload on the inside of the east wharf. Is there any mark of the division between these two berths? If yes, what is it?

(Objected to, for form and substance.)

Ans. An off-shot there, sir.

Int. 8. Now, when you saw this vessel, as you have stated above, how was she lying as to this off-shot?

Ans. She was very near amidships on it.

Int. 9. On what day of the week was this?

Ans. It was on a Sunday, sir.

Int. 10. Had you any conversation with either of the officers of the "Bowdoin," at that time, as to the place where his vessel was lying? If you did, with which of them, and what was said?

(Objected to so far as calling for conversation with anybody but the captain.)

Ans. I had, sir; the mate. I told him that he was not in either of the berths. I told him he had to go forward to get in the upper berth, or haul aft to get in the lower berth. I told him more than that: I said, "If you let your vessel ground there, you'll certainly hurt her." Said he, "I told the captain that we were not as far forward as the wharfinger told us to go; but he said that she was in her berth, and when it suits him," said he, "it suits me." "Very well," said I, "you'll find that if you let your vessel ground there, she will certainly get injured." That
was all that was said. He went ashore immediately, and I saw
115 him go up the wharf, and go into a rum shop across the street, kept by a man named Flannagan.

Int. 11. Who appeared to be in charge of the vessel at this time?

(Objected to, as immaterial and incompetent.)

Ans. I saw nobody on deck but the mate, sir.

Int. 12. Did you hear any conversation, the next morning, between the mate and Mr. Colman, the wharfinger, about placing the vessel; if you did, what was it?

(Objected to, as incompetent and immaterial.)

Ans. I did, sir; they both stood on the cap of the wharf, and I heard him say to the mate, "You havn't gone up where I told you;" said he, "had you, the vessel would not be hurted." The mate said to him, "I told the captain that we were not as far up as you directed me to go, so," said he, "if the vessel is hurted it ain't my fault;" that's all I heard.

Int. 13. Was or not the vessel hauled ahead before she unloaded; if she was, how was her stern as to the off-shot you have spoken of?

Ans. Yes, sir; her stern went a little below it, a little mite; perhaps three or four feet.

Int. 14. Did you ever examine the berth and the keel track that she laid in after she was hauled ahead? If yes, when, and how often?

Ans. I have, sir. Well, I see it every day; I keep a boat there, alongside—a small boat.

Int. 15. At low water of the spring tides, how much water is there in this keel track?

Ans. It is dry out within three or four feet at the lower end of it.

Int. 16. Did you ever see a pile of coal that ran off the wharf a little above this off-shot; if you did, when, and how often?

Ans. I did, sir; I see it every day.

Int. 17. State whether or not you saw it soon after it ran down.

Ans. I saw it the next morning, sir.

Int. 18. How many tons of it were there, in your judgment?

Ans. There is between three and five.

Int. 19. Have you or not ever noticed this pile of coal at low water of the spring tides? If you ever did, state, as nearly as you can, how long after the "Bowdoin" was there did you notice it at low water of the spring tides?

Ans. I have, sir; perhaps a week or two after.

116 Int. 20. How near to the keel track of the "Bowdoin" did it extend?

Ans. Well, in my judgment, it is between twelve and twenty inches, the edge of this pile of coal, to the keel track.

Int. 21. Have you or not ever examined the keel track to see whether there was any coal in it? If you have, was there any there?

Ans. I have, sir. No, sir; there was none there.

Int. 22. How did you ascertain that there was none there?

Ans. By looking at it, sir.

Int. 23. Could you or not see the bottom of the keel track at that place at any time when you examined it?

Ans. I could sir.

Cross-examination.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. Do you keep a junk shop?

Ans. No, sir.

Cross-int. 2. You testified in the district court that you were a junk man, did you not?

Ans. I said so.

Cross-int. 3. (De bene.) Where did you weigh the 25,000 tons of coal you spoke of?

Ans. On Mr. Oakman's wharfs.

Cross-int 4. (De bene.) When?

Ans. Oh, at different times. I said to you, within five years—off and on.

Cross-int. 5. Mr. Oakman has employed you to work for him from time to time, has he?

Ans. His clerk has, sir; and the wharfinger, also.

Cross-int. 6. (De bene.) Where were you at the time of your conversation with the mate, which you have testified to?

Ans. I was standing on the wharf—cap of the wharf.

Cross-int. 7. (De bene.) Did you not testify in the district court that you were in your boat at this time?

Ans. I did not, sir.

117 Cross-int. 8. (De bene.) Are you confident of this?

Ans. I am, sir.

Cross-int. 9. (De bene.) How near the jog were you standing at this time?

Ans. Perhaps within a foot or two of it.

Cross-int. 10. (De bene.) What time in the afternoon was it?

Ans. It was between three and four o'clock.

Cross-int. 11. (De bene.) How was the tide then?

Ans. I guess a little ebb; I think it was.

Cross-int. 12. (De bene.) Was it not one-third out?

Ans. No, I think not; I think it was not one-third out.

Cross-int. 13. (De bene.) Did you not testify in the district court that it was one-third out?

Ans. I don't know—I don't know.

Cross-int. 14. (De bene.) And did you not testify then, that it was between four and five you had this conversation?

Ans. Not as I know of.

Cross-int. 15. (De bene.) How are you able to fix the time now as between three and four?

Ans. Well, I give it to you, according to my opinion.

Cross-int. 16. (De bene.) Have you any definite recollection about the time, now, and can you swear it was between three and four, rather than between four and five?

Ans. I can, as far as my judgment leads me.

Cross-int. 17. (De bene.) Did you not use these words, or these in substance, when you testified in the district court about the conversation with the mate, "I don't recollect saying anything about injuring the vessel; I can't swear I did?"

Ans. I don't know. I don't recollect that I said so.

Cross-int. 18. (De bene.) Have you a more vivid recollection about what you said to the mate in October, 1866, than what you said in court in February, 1867?

Ans. I may have said that in court. I don't recollect in regard to my testimony in court that day—the whole of it. I don't recollect the words that were spoken there.

Cross-int. 19. (De bene.) Did you not testify in the district court

118 that the mate said nothing in reply to your remarks, and that you then went off?

Ans. He did not, I believe; I don't know as he replied to me, when I left the cap of the wharf, he going ashore. I can't say what he said to

me, what the last word was. (To question repeated.) I don't know; I couldn't tell you what I did say, that day—that is, the whole of it.

Cross-int. 20. (De bene.) Didn't you testify in the district court that the mate made no reply at all to you, and you then went off?

Ans. Not as I know of—not as I know of.

Cross-int. 21. (De bene.) Do you feel sure now that you were on the cap-sill of the wharf, and not in your boat, at the time you talked to the mate on the Sunday afternoon you have mentioned?

Ans. After I had a talk with the mate, I went into my boat; she was between the wharf and his vessel; whether I talked to him while I was in the boat. I couldn't say, now. It's a long time now since I done it, a thousand things have passed now, so that I can't recollect.

Cross-int. 22. Did you not, after the last answer was read over to you say, "I want that last remark erased; I said it as side talk, and not as part of my testimony?"

Ans. I did.

Cross-int. 23. (De bene.) Can you swear you talked with the mate before you went into your boat?

Ans. Yes.

Cross-int. 24. (De bene.) What enables you to swear to this now, when in the district court you swore the conversation was after you went into your boat?

(Objected to, as stating something witness has not said.)

Ans. To the best of my opinion I spoke to the mate before I went into my boat.

Cross-int. 25. (De bene.) Had you been to church that afternoon?

Ans. No, sir.

Cross-int. 26. (De bene.) What had you been doing?

Ans. Nothing, of course; I went down on the wharf. Sundays I have to go down there to look after my boat; the boys would knock her all to pieces if I didn't.

Cross-int. 27. (De bene.) What had you been doing that afternoon before going to the wharf?

119 Ans. Nothing.

Cross-int. 28. (De bene.) Were you at home?

Ans. Yes.

Cross-int. 29. (De bene.) Where did you then live?

Ans. Where I do now.

Cross-int. 30. (De bene.) Where is that?

Ans. Gray street, 15.

Cross-int. 31. (De bene.) How near Oakman & Eldridge's wharf is it?

Ans. Perhaps five hundred yards—five or six hundred yards, perhaps.

Cross-int. 32. (De bene.) How many tons of coal did you ever weigh at one time?

Ans. Sometimes three hundred and fifty; sometime five hundred; and sometimes three hundred, according to the size of the cargo.

Cross-int. 33. (De bene.) What was the coal in when you weighed it?

Ans. In cars.

Cross-int. 34. (De bene.) Did you weigh one car at a time?

Ans. Yes, sir.

Cross-int. 35. (De bene.) How much did one car hold?

Ans. Well, from a ton to two tons; two tons is the extreme; all the way from one to two tons; the general run is from twenty-five to thirty hundred.

Cross-int. 36. (De bene.) What time, the next morning, did you hear the conversation between Captain Colman and the mate?

Ans. Sometime in the forenoon.

Cross-int. 37. (De bene.) Can't you tell the time with more certainty?

Ans. No, sir; I cannot, indeed.

Cross-int 38. (De bene.) Who was present at this conversation?

Ans. I did't see anybody there but the two of them, standing together.

Cross-int. 39. (De bene.) How much was the "Bowdoin" hauled ahead?

Ans. I couldn't tell you how many feet.

Cross-int. 40. (De bene.) Give us your best judgment?

120 Ans. Well, if I give you my best judgment, I should think about twenty feet.

Cross-int. 41. (De bene.) What danger did you have in mind, when you spoke to the mate on Sunday? Was it the abrupt descent in the bottom of the dock by the jog?

Ans. Not by the jog, it is level—that is tapered; below the jog, there is a descent—that is, where the two berths are divided—right within a few feet of the jog.

Cross-int. 42. How many feet below the jog is this descent?

Ans. I can't tell you how many. Which descent do you mean? That is, the abrupt descent into the deep water.

Cross-int. 43. I mean the abrupt descent into the deep water; can you tell how many feet that is from the jog?

Ans. I can't tell you the exact number of feet.

Cross-int. 44. Can you tell about how many?

Ans. My judgment, between six and ten feet.

Cross-int. 45. At the low spring tides you have spoken of, how many feet from the jog was it to the place where the keel track was dry?

Ans. It dries about even with the jog; I am not sure of that; I think so; it dries about the jog, anyhow.

Cross-int. 46. (De bene.) Can you swear that the "Bowdoin" was afloat when you had this conversation with the mate on Sunday afternoon?

Ans. I cannot; I cannot.

Cross-int. 47. (De bene.) How did you know this person was the mate?

Ans. He told me so.

Cross-int. 48. (De bene.) When did he tell you so?

Ans. That evening.

Cross-int. 49. (De bene.) What time that evening?

Ans. Between three and four o'clock, I think.

Cross-int. 50. (De bene.) Did you testify in the district court in regard to the conversation on Monday morning, between Captain Colman and the mate?

Ans. I don't know; I forget.

JOHN KEATING.

121 Deposition of JOSEPH BURNETT, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, April 11, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. My name is Joseph Burnett; Henchman street, Boston; I am a stevedore.

Int. 2. How long have you been engaged in that business, and where?

Ans. Twenty-two years, and a little better; in Boston and vicinity.

Int. 3. Do you know the wharves and dock in Charlestown formerly occupied by Oakman & Eldridge, and now by Samuel Oakman?

Ans. Yes, sir.

Int. 4. How long have you known them, and how much?

Ans. Well, I've known them since and before they were built up. It must be twenty-seven or twenty-eight years since I first done work 'round there, for my brothers and myself.

Int. 5. Have you unloaded vessels there; If yes, how many?

Ans. I have unloaded a great many, more than I could give you an account of at present.

Int. 6. Did you see the schooner "Bowdoin," there in October and November, 1866?

Ans. Yes, sir.

Int. 7. Did you see her Monday morning after she had hauled to the wharf; if yes, how early in the morning?

Ans. I saw her about—as nigh as I could get—about half past six o'clock. I had to go over and get my men to work; it might have been nigher seven than half past six, but I am pretty certain it was about half past six.

Int. 8. Describe the position she was then in.

Ans. Well, she was listing off at the time I went down; and
122 when I went down the wharf, I called the mate's attention (the mate of the "Bowdoin") and an engineer that Mr. Oakman has, to the fact that the vessel was lying very bad, and that she would break in two if there wasn't something done. I collected what men I could find, and got tackles out to the other side of the wharf from her masthead to hold her up.

Int. 9. How many berths for vessels are there on that side of the dock where the "Bowdoin" was lying that morning?

Ans. Two.

Int. 10. How was she lying in relation to these two berths?

(Objected to, for form and substance.)

Ans. She was lying partly in one and partly in the other.

Int. 11. What, in your judgment, had caused her to list off?

(Objected to, witness not having been shown to be an expert.)

Ans. Not lying into her own berth.

Int. 12. Were there any fenders between her and the wharf; if yes, how many and how large?

(Objected to as incompetent and immaterial.)

Ans. Well, there were none where the fenders generally are put; there was one forward of the cathead, a six-inch fender; it looked as if it had been put there to fend her as she hauled into the dock, and been left there.

Int. 13. Was she afterwards hauled ahead before she unloaded; if so, how much?

Ans. She was hauled ahead, to the best of my recollection, about twenty feet, or it might be a little more.

Int. 14. After she was so hauled ahead, did she or not receive any damage?

(Objected to as incompetent and immaterial.)

Ans. She received no damage after she was hauled ahead.

Int. 15. Was the berth in which she lay after she was hauled ahead a safe or an unsafe berth for her to lie in?

(Objected to as incompetent and immaterial, and because witness has not been shown to be an expert.)

Ans. Perfectly safe, sir.

Int. 16. Have you ever examined the berth in which she lay after she was hauled ahead; if yes, when and how often?

123 Ans. Yes, I've examined that. Well, I examined it a few days after the vessel hauled out of there after discharging. I have discharged vessels lying in the same berth since.

Int. 17. How many coal cargoes do you suppose you ever discharged as stevedore?

(Objected to as immaterial.)

Ans. I couldn't tell that; it would take three weeks to figure that up; I should say five thousand, any way.

Int. 18. At what time of tide did you make the examination of that dock spoken of in answer to the sixteenth interrogatory?

Ans. I examined it on ebb tide, and I think it was very near low water.

Int. 19. How did you make this examination? In what did you go, and what means did you use?

Ans. I went in my boat into the dock; my attention was called to an examination of the berth; I went into the berth and examined the keel track to see if there was any coal in it, or anything to injure a vessel's bottom. I found nothing.

Int. 20. Did you see some coal in the dock that had run off the wharf; if you did, how much of it was there, in your opinion?

Ans. I saw the coal ran off the wharf. I should suppose there was somewhere about four or five tons of coal there.

Int. 21. At the time you were there, making this examination of this berth and keel track, how deep was the water in the keel track?

Ans. At the upper end, clear up where she laid, there was none at all; and it varied up and down, on a gradual descent, between two and three feet; I mean that the depth of water varied from nothing to two and three feet.

Int. 22. What kind of a boat were you in, and how much water did she draw?

Ans. I was in a boat twenty-two feet long, three feet beam, drawing not over six inches of water, with me in her.

Int. 23. By what means did you examine this keel track, by feeling, or sight, or by what other means?

Ans. By feeling and by sight.

Int. 24. Could you not see the bottom all the way down?

Ans. I could.

124 Int. 25. How near to the keel track did the coal that had run off from the wharf come?

Ans. I couldn't say exactly; it started from the wharf—I couldn't say exactly, but should say from two and a half to two feet—from where the keel was bedded in the mud.

Int. 26. Could you tell whether any vessel had ever rested upon this pile of coal?

(Objected to, for form and substance.)

Ans. There never had any vessel rested on it.

Int. 27. How do you know that?

Ans. Well, I know it by looking at the coal and looking at the vessel at the same time.

Int. 28. When was this, and at what time of tide, that you looked at the vessel and the coal at the same time?

Ans. It was on the first morning—on Monday morning, about nine o'clock—two thirds ebb. You could see between the vessel and coal all the way along.

Int. 29. Was there anything about the appearance of the pile of coal after the vessel had hauled out by which you could judge whether a vessel had rested on it?

(Objected to for form and substance.)

Ans. Yes. Well, the marks of the feet of the port warden spread around it, and where they had been poking down with the blade of an oar.

Int. 30. How otherwise would it have appeared if a vessel had rested on it?

(Objected to for form and substance.)

Ans. It would have appeared flat, and jammed down.

Int. 31. Were you or not present when the port warden stood in it?

Ans. I was.

Int. 32. Which port warden was it?

Ans. I couldn't tell you the name of the port warden.

Int. 33. Had you ever unloaded vessels in the berth where the "Bowdoin" was discharged, before she was there; if yes, how many?

Ans. Yes, sir; I couldn't give you a decided answer on that; I have unloaded several.

125 Int. 34. Were you ever in that dock, in a boat, at any time besides that you have mentioned? If yes, how often?

Ans. A great many times.

Int. 35. Where were you employed and what were you doing the week before the "Bowdoin's" accident?"

Ans. I was employed in the navy yard, on Oakman & Eldridge's wharf, and various other places. I had unloaded three vessels on Oakman & Eldridge's wharf that week previous to the accident you are talking about.

Int. 36. What was done, if anything, with the stage used for wheeling coal from the vessels to the wharf, on Monday morning?

Ans. It was moved from the upper corner of the run down the wharf till it came abreast the main hatch of the schooner, then rigged out with the intention of discharging coal.

Int. 37. State whether or not you ever before saw a vessel at that wharf lying in the position in relation to the two berths in which you found the "Bowdoin" on Monday morning.

(Objected to as incompetent and immaterial.)

Ans. I never saw any vessel in that position, at that wharf, before.

Int. 38. Did you see the "Bowdoin" about the wharf the week before the accident?

Ans. Yes, sir.

Int. 39. Who was there apparently in charge of her?

(Objected to for form and substance.)

Ans. The mate.

Int. 40. Had you any conversation with the mate, on Monday, in relation to the reason of his placing his vessel where he did? If so, what was it?

(Conversation objected to as incompetent and immaterial.)

Ans. Yes, sir; he told me the captain came down on Sunday and ordered him to haul her astern, he being afraid the bowsprit would come down on the upper pier of the wharf, on the stones.

Int. 41. Where were the vessels that you discharged the week before, at that wharf, lying?

Ans. On the other side, and across the end.

Int. 42. Do vessels lie there across the end to discharge?

126 Ans. Quite often; there is a stationary stage there built a purpose for them to unload there all the time.

Int. 43. What kind of a berth is that, as to safety.

Ans. A very safe berth.

Cross-examination.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) You are frequently employed by Mr. Oakman to unload vessels at his wharfs, are you not?

Ans. Very seldom; captains employ me.

Cross-int. 2. (De bene.) Were you employed by any one to unload the "Bowdoin" in October and November, 1866?

Ans. I was not.

Cross-int. 3. (De bene.) Where was the vessel lying that you went over there to unload, that Monday morning you have spoken of?

Ans. She was lying across the end of the lower wharf.

Cross-int. 4. (De bene.) What wharf do you mean by the lower wharf?

Ans. Wharf next the navy yard; the same wharf where this accident happened.

Cross-int. 5. (De bene.) Were you present when the movable stage on top of the run was moved down the run to the hatchway of the "Bowdoin?"

Ans. I helped to put it there.

Cross-int. 6. (De bene.) In what position was this stage on the run before it was moved? Was it at right angles with the run, or was it drawn across in a slanting direction?

Ans. (The witness placed a paper on the corner of the table, with one corner of the paper projecting over the edge of the end of the table, and one corner over the side of the table, and said, "That was the position." And further said) The stage is about twenty-four feet long, I think; across the run is about four feet and a half, not over five, that is the width of the platform on top of the run; the stage laid across the end of the run in a slanting position.

Cross-int. 7. (De bene.) How wide was this movable stage?

127 Ans. I think it was five planks wide; I am sure of the fact that it was five planks wide; the planks would go thirteen inches wide; there is no space between the planks, they are right close together.

Cross-int. 8. (De bene.) When this stage was hauled in, did not the end that was to be run out to a vessel lie further down the wharf than the other end?

Ans. Yes, sir; I misunderstood the question when I answered, Yes; in this particular case, it laid up the wharf, one end lay over the corner of the run, the other projected over the wharf.

Cross-int. 9. (De bene.) You have seen this stage hauled in before, have you not?

Ans. Yes.

Cross-int. 10. (De bene.) Is it not generally hauled in so that the end that runs out to a vessel lies further down the wharf than the other end?

Ans. It makes no difference where it lies; the stage is hauled out, and sometimes that end is left one way and sometimes the other, there is no particular way.

Cross-int. 11. (De bene.) How are you enabled to remember what its position was on this morning?

Ans. I helped to move the stage, myself.

Cross-int. 12. (De bene.) At what time did you help to move it?

Ans. Between seven and a half past eight sometime.

Cross-int. 13. (De bene.) Who assisted you in moving it?

Ans. The men that belonged around the wharf.

Cross-int. 14. (De bene.) Can you state the names of those who assisted you, and how many there were?

Ans. I cannot.

Cross-int. 15. (De bene.) The time you went in a boat to examine the keel track, how far up it did you go?

Ans. I went up till the boat struck the mud.

Cross-int. 16. (De bene.) How far was that from the jog in the wharf?

Ans. Nearly the length of the vessel.

Cross-int. 17. (De bene.) When you went up the keel track in your boat, how did you propel it?

Ans. With an oar on the bottom.

128 Cross-int. 18. (De bene.) By pushing over the side of the boat?

Ans. By touching the bottom, and shoving her along; I always push over the side, to shove her along.

Cross-int. 19. (De bene.) Did not your pushing stir up the mud?

Ans. I should think not; I don't recollect exactly about that, you know?

Cross-int. 20. (De bene.) How much water was there in the keel track, opposite the pile of coal, when the tide was two-thirds ebb, the day you say you saw all along the bottom of the vessel?

Ans. I didn't say no such thing.

Cross-int. 21. (De bene.) On Monday morning, about nine o'clock, when the tide was two-thirds ebb, you said you could see between the vessel and the coal, all the way along, did you not?

Ans. Yes, but I didn't say all the way along the bottom of the vessel.

Cross-int. 22. (De bene.) How much water was there in the keel track, at that time, opposite the pile of coal?

Ans. I didn't measure it.

Cross-int. 23. (De bene.) Can you give us your judgment?

Ans. I should suppose there was three and a half or four feet, at that time.

Cross-int. 24. Some of the coal was then under water, was it not?

Ans. Certainly.

Cross-int. 25. (De bene.) How much of it?

Ans. The biggest part of it.

Cross-int. 26. (De bene.) And do you mean to swear you, standing on the wharf, could see where that coal terminated under water?

Ans. I didn't say I stood on the wharf and seen all that.

Cross-int. (De bene.) Where did you stand?

Ans. Where did I stand when?

Cross-int. 28. (De bene.) Did you get down on the pile of coal on Monday, the morning of or after the accident, at or about nine o'clock?

Ans. I did not; I got down on the rocks between the vessel and the wharf close to the coal. I mean the rocks that make the wall of the wharf; they make better steps to stand on than coal does.

Cross-int. 29. (De bene.) Standing there on the rocks of the
129 wharf, do you mean to swear that with the tide two-thirds ebb you could see where that coal ended under water?

Ans. I do not.

JOSEPH BURNETT.

Deposition of AARON F. SWANN, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, April 13, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. Aaron F. Swann; 63 Bow street, Charlestown; engineer. I have been engineer in a steamboat, a railroad, and also stevedoring.

Int. 2. State particularly what kind of engineering you have been doing for the last ten years, and where you have been employed.

Ans. I commenced with Oakman & Eldridge, April 9th, 1855; I worked there till October 4th or 6th, 1859, when I left, and went to Texas; then I let myself there to Captain Bernard, on the steamer "Baltic," as chief engineer. I stopped there two months and a half, I think; then the boat was hauled up, and I went on the Texas Central Railroad. I set up a locomotive there, and put her on to the iron; I stopped there about two months and a few days, I think; then I returned home again. Mr. Oakman met me on my return, and asked me for what I would go to work for him again. I told him, and he said,—"I want you to go to work for me to-day noon;" and I went to work for him; that was in 1860, June, I think. I worked for him three or four years; then I bought an engine of my own, and went a stevedoring. I think I worked it two summers, and then I went back to work for Mr. Oakman. I worked for him all the winter, off and on, at odd jobs—this is a year ago this last winter. I worked for him a year, steady, and the winter following I worked for him at odd jobs; then, a year ago last March, the 11th, I went to work for Jacob Hittinger, and have been working for him since, running his ice engine.

130 Int. 3. What kind of engineering did you do for Oakman & Eldridge?

Ans. Stevedoring—hoisting cargoes by steam.

Int. 4. While you were with Oakman & Eldridge, were they all the time doing business in the same place where they were in October and November, 1866?

Ans. They were, sir.

Int. 5. Did you, as engineer, discharge the schooner "Bowdoin," in October or November, 1866?

Ans. I did.

Int. 6. When did you see her first after sheh auled into the wharf; on what day, and at what time of day?

Ans. I couldn't tell you the day of the month; it has slipped my mind,—it was a Monday morning, between half past five and six o'clock.

Int. 7. How many berths for unloading vessels are there at the side of the wharf where the "Bowdoin" was hauled in?

(Objected to, for form and substance.)

Ans. There were two berths.

Int. 8. When you first saw the "Bowdoin," on Monday morning, how was she lying, as to these two berths?

(Objected to as immaterial and incompetent.)

Ans. She wasn't in either one of the berths; she was lying between the two.

Int. 9. How were these berths at that time, as to being safe or unsafe for vessels that were hauled into them—into the places where vessels lie to unload?

(Objected to, witness not having been shown to be qualified to judge.)

Ans. They were good—good berths.

Int. 10. State whether or not, while you have been with Messrs. Oakman & Eldridge you ever knew a vessel injured in either of these berths. (Objected to as incompetent and immaterial.)

Ans. I never knew of a vessel being injured in them, but that vessel. (To question repeated.) No, sir; not in either of the berths.

Int. 11. State whether or not you ever before knew a vessel hauled into the place where you found the "Bowdoin" on Monday morning.

131 (Objected to as incompetent and immaterial.)

Ans. No, sir, not to ground; shifting vessels at high water, they have hauled them there, not to stop.

Int. 12. What did you do on Monday morning, when you saw the "Bowdoin" in that place?

Ans. I notified the captain.

Int. 13. Where was he at the time?

Ans. He was in his berth.

Int. 14. Do you know whether the mate was on board at the time?

Ans. He was not.

Int 15. How do you know this?

Ans. Because the captain inquired for him, and he wasn't to be found.

Int. 16. What did you first do, or say, when you found the "Bowdoin," as you have described on Monday morning?

Ans. I went aboard of her as soon as possible; I found she was aground, and I went to the companion-way, and called for the mate. The captain, he hollered, and wanted to know what was wanted. I told him to come out there, and then I says to him, "What in the devil did you stop here for?" Says I, "You are breaking your vessel in two." I asked him why he didn't haul into his berth where he was ordered; that's about all I said to him at that time.

Int. 17. What, if anything, did the captain, at that time, say to you in reply to what you said?

Ans. He didn't say anything for himself; he appeared to be confused; he couldn't control himself.

Int. 18. Did or not the "Bowdoin" haul ahead to discharge; if yes, how much?

Ans. She did; between twenty and twenty-five feet.

Int. 19. Had you or not discharged any vessels in that berth where the "Bowdoin" was unloaded the week before that Monday; if yes, what were their names, if you remember?

Ans. I discharged two; I disremember their names.

Int. 20. When the "Bowdoin" was hauled ahead to the place where she unloaded, how did her main hatch come, in relation to the place where the main hatch of either or both of these two vessels had been while they were unloaded?

132 (Objected to as immaterial.)

Ans. About the same place when she was hauled ahead; there may have been a few inches difference.

Int. 21. Was there a movable wheeling stage lying on the bulkhead, or run, when you first saw the "Bowdoin" on that Monday morning?

Ans. There was.

Int. 22. In what position was it lying?

Ans. It was lying quartering with the wheeling stage; by the wheeling stage, I mean the top of the bulkhead. The stage, after being used for the last vessel unloaded there, was run in until it balanced; then the tackle which connected it with the vessel was unhitched, and the stage swung in; the end which had been towards the vessel was swung in

down the wharf, towards the sea; that brought the end towards the vessel further down the wharf, and the other end further up the wharf than where it laid when in use.

Int. 23. Did the corners of this movable stage, as it was then lying, extend over any part of the bulkhead or permament wheeling stage; if yes, what part or parts?

Ans. One corner of one end, over the side of the bulkhead towards the dock; the other end of the stage projected over the upper end of the bulkhead, and over the side opposite the dock.

Int. 24. Was or not this stage moved down the bulkhead on that Monday morning; if yes, for what purpose?

(Objected to as immaterial.)

Ans. For lightening the after part of the vessel which projected from the upper berth into the lower berth; she wasn't in either berth—the vessel wasn't.

Int. 25. In what condition was the "Bowdoin" on that Monday morning as to being upright or heeled off?

Ans. She was very near upright when I moved the stage down; before I got the purchases up on board the "Bowdoin" for the stage, she was listed over so far from the wharf that my stage wasn't long enough to reach from the bulkhead to the hatchway, so that we could work the "Bowdoin" to lighten her.

Int. 26. As the stage was lying that Monday morning, how was it as to the "Bowdoin's" main hatch, opposite to it, above it, or below it? I mean before either stage or vessel was moved.

133 Ans. Well, from eight to ten feet, the stage was up the wharf above the main hatch, the forward part of the combing.

Int. 27. Which part of the stage was eight or ten feet above the forward part of the combing?

Ans. The end of the stage towards the sea.

Int. 28. How many vessels do you think you ever unloaded at Oakman & Eldridge's wharf?

Ans. A number of thousand, I think.

Int. 29. Have you ever been down into that dock between the two wharfs occupied by Oakman & Eldridge?

Ans. Yes, sir.

Int. 30. How many times have you been there?

Ans. Well, I've been there a great many times; I couldn't tell you how many.

Int. 31. What, in your opinion, caused the "Bowdoin" to heel off? Explain fully.

(Objected to, witness not being shown to be an expert.)

Ans. Her bow was hauled in close to the wharf; her stern laid off from the wharf, and the bed being outside of the "Bowdoin" on the bow, (she was hauled inside of the bed on the bow,) and she grounded forward before she did amidships, and she struck on the inside of the bed, and that listed her off. If she had been hauled in straight her width would have carried her into the bed where vessels had lain previous, but her bow being hauled in while her stern was off, she grounded first on the inside of the bed, and that listed her off.

Int. 32. Hauled in straight to what place?

Ans. To the berth where the other vessels had discharged previous.

Int. 33. Do you know about some coal running off from the wharf a few days before the "Bowdoin" was in there?

Ans. Yes, sir.

Int. 34. How much of it was there, as nearly as you can judge?

Ans. Somewhere from two to five tons.

Int. 35. State, if you know, whether or not the "Bowdoin" ever rested on this pile of coal.

Ans. She did not.

Int. 36. State how you know.

134 Ans. Because I saw the coal after the tide went down; and you could see right between the vessel and the coal.

Int. 37. What would have been the effect upon the coal if the vessel had lain upon it?

Ans. It would have pushed it in the mud.

Int. 38. How much of the keel track where the "Bowdoin" lay to discharge her cargo is bare at low water of the high tides?

Ans. I shouldn't think there was more than about two-thirds of it bare.

Int. 39. Did you examine this keel track at any time after the "Bowdoin" went out? If you did, when, and at what time of tide was it? If more than once, how often?

Ans. I did; about low water. I think the next day after the "Bowdoin" went out, or the next day but one. I don't remember that I did more than once, particularly; I was down there more than once, but don't remember that I examined it more than once.

Int. 40. Have you or not ever looked at it from the wharf since the "Bowdoin" went out?

Ans. I have.

Int. 41. Can you say whether or not there was coal in it?

(Objected to for form and substance.)

Ans. In the keel track? No, sir; there was none.

Int. 42. How did you examine at the time you went down into the dock for the purpose of examining?

Ans. With my hand and arm.

Int. 43. While you were discharging the two vessels that were discharged in that berth the week before the "Bowdoin" was discharged, did you see the captain of the "Bowdoin" about the wharf?

Ans. I did.

Int. 44. How many times, and how near was he to the vessel you were discharging?

Ans. Well, I couldn't say how many times; he passed and repassed; he went past the vessel, and also came over to me, right abreast of the vessel discharging. He came over to me and asked me a number of times when the berth would be ready for him.

Int. 45. Did you, after the "Bowdoin" was injured, ever hear

135 the mate say anything about what he told the captain, about putting the vessel in the place they left her; if you did, what did he say?

(Statements of the mate objected to as incompetent and immaterial.)

Ans. He didn't say anything about putting her where she lay that Monday morning; but I heard the mate say he told the captain that the vessel didn't lay where the foreman told him to put her.

Int. 46. Did not lie when, where the foreman told him to put her?

Ans. Monday morning, at half past five—between half past five and six.

Int. 47. Did he or not say whether he told the captain which way she was from the place where the foreman told him to put her?

(Objected to for form and substance.)

Ans. She lay too far astern; that the foreman told him to haul her ahead further than she laid at that time.

Int. 48. State whether or not the "Bowdoin" received any injury after she came into the berth where she was discharged.

(Objected to as incompetent and immaterial.)

Ans. She did not.

Int. 49. Were there any fenders between the "Bowdoin" and the wharf, when you first saw her on Monday morning? if yes, where, and how large.

Ans. Yes; there was a small up-and-down fender—I should think it might have been eight or nine inches through—over the bow or quarter.

Int. 50. Where do you mean to say it was?

Ans. It was between the cat-head and the straight line of the rail—on the circle.

Int. 51. Is there a spar fender in the dock for the use of vessels; if so, where was it on that Monday morning at the time you first saw the "Bowdoin?"

Ans. The end of it laid on the fluke of her anchor; the other end laid quartering across the dock, not straight across, but quartering. There wasn't room enough for it to lie straight across.

136 *Cross-examination.*

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. What time did you breakfast that Monday morning you saw the "Bowdoin?"

Ans. I didn't have any breakfast Monday morning.

Cross-int. 2. Didn't you testify in the district court that the first time you went on the wharf was to build your fire; that then you did not notice anything was the matter with the "Bowdoin;" that you then went home to breakfast; and, after breakfast, on coming down to the wharf, saw that the "Bowdoin" was in danger?

Ans. I don't remember of it. There were two of us running engines; I went down and built my fire, and then I went down to the other berth below that, to assist my partner in building his, and there I noticed the "Bowdoin" where she laid; that was on the opposite side of the dock; and I went round the dock, on the cap, and notified them of it; we (I and the other engineer) were going home to breakfast together; we live within a step or two of each other, in one block; but there didn't either of us go home to breakfast; at any rate I didn't.

Cross-int. 3. Where was your engine placed at that time, and where the other engine?

Ans. My engine was placed right opposite the "Bowdoin," where she should have been if she had been in her berth; and the other engine was on the same side of the dock that mine was, further down.

Cross-int. 4. Was your engine in that place the previous week?

Ans. It was.

Cross-int. 5. And was that the place where the captain of the "Bowdoin" came to see you to ask when his berth would be vacant?

Ans. It was.

Cross-int 6. Can you not state the distance the "Bowdoin" was hauled ahead with more exactness than by saying from twenty to twenty-five feet?

Ans. Well, yes, I suppose I might; somewhere from twenty-one to twenty-two or twenty-three feet—somewhere in that vicinity. It

137 might have been twenty-one and a half; I measured it with a two-foot rule, and you can't come very exact with that, within an inch or two, unless you are very particular.

Cross-int. 7. Did you not testify in the district court that it was twenty feet six inches?

Ans. I don't remember; I might; I measured it to-day with a two-foot rule; I might have measured it then with something else; I don't remember.

Cross-int. 8. How wide is the permanent wheeling stage on the top of the run?

Ans. I think it is three plank wide; the plank average about a foot wide, and they lie so close together that a wheel can't get in between.

Cross-int. 9. How long and how wide is this movable stage that you run out to vessels?

Ans. Well, I couldn't tell you exact; I measured it once, but I've forgotten; they vary in length from seven or eight feet up to seventeen or eighteen, it depends on the width of vessel; they vary in width from seven to nine feet.

Cross-int. 10. I am not speaking of movable stages generally, but of the particular stage which was on the run when the "Bowdoin" hauled in, in October, 1866.

Ans. I don't remember; I measured it at the time, but I don't remember; I calculate it was about seven feet wide and fourteen or fifteen feet long; I couldn't swear to the stage, and therefore did not measure any this morning. Mr. Oakman don't use stages there much, he uses cranes, and therefore I disremember.

Cross-int. 11. Who told you this morning where to begin to measure, and where to stop?

Ans. I, myself.

Cross-int. 12. Did no one else tell you?

Ans. No, sir.

Cross-int. 13. How did you know?

Ans. The cap was marked by myself and George Manning.

Cross-int. 14. When was it marked, and how?

Ans. It was marked at the time that Monday morning, when the vessel lay so as to damage herself with a saw in the cap, crossways with the cap.

138 Cross-int. 15. Opposite what part of the vessel was this cut?

Ans. Abreast of the stem; as square across as we could get it without using squares.

Cross-int. 16. What part of the stem, the upper or lower part?

Ans. About the centre in length of the stem; the forward part of it.

Cross-int. 17. (De bene.) Have you never partly unloaded a vessel at high tide in or about the place where the "Bowdoin" first lay on Monday morning, in October, 1866?

Ans. I never have.

Cross-int. 18. (De bene.) Have you never seen a vessel partly unloaded there?

Ans. A vessel came in there, I think, once, with a little cement—a few barrels—and unloaded there; I don't know whether she stopped there over one tide or not; she wasn't loaded; I doubt if she did stop over one tide; still she might.

Cross-int. 19. So far as the wharf is concerned, there is nothing to prevent unloading a vessel at that place, is there?

Ans. There is a jog in the wharf. It could be done; but then it couldn't be done with such convenience as it could in her berth; it would

need a longer stage to reach across the vacant place in the jog; the dock is narrower in the upper berth than it is in the lower one.

Cross-int. 20. As the "Bowdoin" was lying that Monday morning both her hatchways were above the jog, were they not?

Ans. I think they were at that time, or about abreast of the jog; she listed over so that it would take a pine log to reach her.

Cross-int. 21. You did not carry your movable stage below the jog that Monday morning, did you?

Ans. I think the lower end of it was below as we carried it down; then, come to swing it round, it brought the stage just about across the jog.

Cross-int. 22. The reason you could not reach her was because she was listed over, was it not?

Ans. Yes, sir; and laid so far away; her stern lay out from the wharf.

Cross-int. 23. Have you any positive recollection of going down into the dock and examining the keel track?

139 Ans. Yes, sir.

Cross int. 24. What were you in at the time, and who was with you?

Ans. I was in a boat; the foreman of the wharf was with me and the man who was measuring the wharf; I disremember his name; he was a civil engineer, at any rate; he sounded in the lower berth and upper berth, and in the bank between the berths. The lower berth had formerly been dredged out, so as to allow ships to come into it, and the water was deep there; and the bank was once sharp between the two berths, but it had caved in, and wasn't very sharp at this time; a sewer runs in, and has a tendency to fill it up; there was a hatchway on the wharf where we used to put in dirt and rubbish to fill up, and it used to wash through the wall into the dock.

Cross-int. 25. Where did this sewer run into the dock?

Ans. At the end, I think. I think it is a sewer; there is a running brook runs there all the time the tide is out; I think it is a sewer. I won't be positive.

Cross-int. 26. At which end?

Ans. The upper end, towards the street.

Cross-int. 27. Was it when you were in the boat with the civil engineer that you put your hand down and touched bottom?

Ans. Yes, sir. I was in the bow of the boat, and held on to a hoop that lay on the bottom, sunk in the mud; one end of it might have stuck up three or four inches.

Cross-int. 28. Now, whereabouts in the keel track did you put your hand down and touch this hoop?

Ans. This hoop wasn't in the keel track, but I put my hand down in the keel track; the stem of the boat lay right abreast this keel track. This was the after part of the keel track.

Cross-int. 29. How far from the keel track was this hoop?

Ans. Well, I should judge it was three or four inches from the keel track; far enough to put my hand down on the side of the boat; it wasn't directly on the stem of the boat, but on the side of the stem.

Cross-int. 30. And how near the jog in the wharf was this hoop?

Ans. It was a little below the jog in the wharf, towards the sea.

Cross-int. 31. How deep was the water in the keel track opposite the jog in the wharf at the time you took hold of the hoop?

140 Ans. It was a little over my elbow, down to the bottom of the keel track; about eighteen inches.

137 might have been twenty-one and a half; I measured it with a two-foot rule, and you can't come very exact with that, within an inch or two, unless you are very particular.

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140 Ans. It was a little over my elbow, down to the bottom of the keel track; about eighteen inches.

Cross-int. 32. How much water did your boat draw?

Ans. She didn't draw more than six inches forward, with the other two men in her stern.

Cross-int. 33. How much did the boat draw aft?

Ans. She might have drawed a foot.

Cross-int. 34. The object of going in a boat, at this time, was to measure the depth at the descent between the two berths, was it not?

Ans. I couldn't tell you. They was a measuring there; they didn't tell me what they were going to do, or doing; they were measuring in that place, and noting it down.

Cross-int. 35. How far above the jog did you go in the boat that day in the keel track where the "Bowdoin" had been?

Ans. Well, we didn't go up. I have stated once before that the stem of the boat went to the edge of the blink of the keel track; I mean to where it slopes off deeper into the lower berth.

Cross-int. 36. Where were you standing at the time you say you saw between the vessel and the coal?

Ans. Just below the jog; just beyond her stern.

Cross-int. 37. Were you on the wharf?

Ans. Yes, sir.

Cross-int. 38. Was this before or after the vessel was hauled ahead?

Ans. Before.

Cross-int. 39. Some of the coal was then under water, was it not?

Ans. Yes, sir; a little of it. Some little of the coal had run down by her quarter, about one tier in the mud. By "tier" I mean a layer of coal one lump thick.

Cross-int. 40. Could you see where this coal ended under water at the time you stood below the jog, as you have stated in the answer to the thirty-sixth cross-interrogatory?

Ans. I couldn't, sir; but the quarter of the vessel, as she listed over, was above water; the coal had run into the water so that you couldn't see where it was; but when we went down into the dock, after the vessel was hauled out, we could see that it hadn't been under her.

Cross-int. 41. What part of the quarter of the vessel was at that time out of water?

141 Ans. Well, it's what they call the stern quarter; where it is cut up. I ain't a seafaring man more than I suppose you are, but I suppose almost any one knows what they call the stern quarter is. Some call it the run. There are different ways of speaking of it.

Cross-int. 42. How much of this was out of water?

Ans. It was the whole out; all of that side next the dock; only the keel laid in the water.

Cross-int. 43. Do you mean to say that you could see the top of her keel at the stern-post?

Ans. I don't know that you could; but there is no width to a vessel there but what is filled up with wood.

Cross-int. 44. Now, how far from the stern-post are you willing to swear you could then see the keel?

Ans. I couldn't say how far from the stern-post you could see the keel.

Cross-int. 45. This spar-fender, that you say was lying across the head of the dock quartering, was fastened at one end to the wharf where your engine was, was it not?

Ans. Yes, sir; it was below where my engine was, made fast temporarily, so that we could use it at any time we wanted it.

Cross-int. 46. How thick through was this spar-fender?

Ans. Well, I should judge it was twenty inches.

Cross-int. 47. (De bene.) Can you swear that you took particular notice that the "Bowdoin" did not have any other fenders than the one you have spoken of near the bow?

Ans. I know she didn't have any other out. I can swear to that. She might have had some aboard.

Cross-int. 48. (De bene.) Can you swear that you noticed, that Monday morning, that she had no other fenders out?

Ans. Yes, sir.

Cross-int. 49. When you moved the stage on Monday morning, with the intention of unloading, you moved it to the main hatch, did you not?

Ans. Yes, sir.

Cross-int. 50. Which do you mean by the main hatch; the forward or the after hatch?

Ans. The after hatch. The main hatch is generally amidships
142 in this class of vessels; this one was abaft the mainmast; no, it was forward of the mainmast. I can't be positive.

Direct examination resumed.

Interrogatory by Mr. Dodge in behalf of respondents and appellants, and answer of the witness thereto.

Int. 52. How wide is the dock, if you know, from the place where your engine stood to the place where the "Bowdoin" discharged?

Ans. I do not know how wide it is.

A. F. SWAN.

Deposition of ALFRED TORREY, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, April 14, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business; and if you say you are a mariner, state how long you have been and in what capacity.

Ans. Alfred Torrey; Deer Isle, Maine; mariner; I have been a mariner about twenty years, since the first; mate for the last seven years; the remainder of the time in different circumstances.

Int. 2. Of what vessel, if any, were you mate in October and November, 1866, and who was master of her at the time?

Ans. The schooner "Mary D. Haskell." Asa G. Haskell was master of her.

Int. 3. Did that schooner bring a cargo of coal to Oakman & Eldridge's wharf in October, 1866?

Ans. Yes, sir.

Int. 4. State whether or not she had to wait for a berth to discharge; and if you say she did, state how long, and where she lay while waiting.

143 Ans. Yes, sir; I think about three days; at the end of the pier—western pier.

Int. 5. Did you see the schooner "Bowdoin" while you were so waiting; if you did, where was she lying at that time?

Ans. Yes, sir; she was lying the outside of us.

Int. 6. Who was in charge of her?

Ans. Apparently the mate; I supposed he was mate.

Int. 7. Did you see the "Bowdoin" haul into the wharf at which she unloaded; if you did, on what day of the week did she haul in?

Ans. Yes, sir; on Sunday.

Int. 8. Where were you, and what doing, while she was so hauling in?

Ans. I was on board the schooner "Bowdoin," sir; I was heaving on the capstan, sir.

Int. 9. Who, if any one besides you, was on board the "Bowdoin," helping haul her in, besides those who belonged on board her?

Ans. Captain Haskell and Captain Barber.

Int. 10. Do you know Captain Coleman, the foreman of Oakman & Eldridge's wharf?

Ans. Yes, sir.

Int. 11. State whether or not, on the day before the Sunday on which the "Bowdoin" hauled in, as you have stated, you heard Captain Colman give the mate of the "Bowdoin" any directions as to the place to which she was to be hauled. If you did, state at what time of day it was, what was said, and where they were standing at the time.

(Objected to as incompetent and immaterial.)

Ans. Yes, sir; it was between five and six in the afternoon, I should judge; they were standing near the capsill of the wharf, near a bulkhead there is there, alongside the bulkhead; Captain Colman told him to haul his vessel till his main hatch, the after combing, came opposite a post in the bulkhead, and that would bring the stage right for his hatch when it was swung 'round; then the vessel would be in her regular berth of discharging. That's all that I heard concerning the vessel. Captain Colman put his hand on the post, and told him to haul his vessel to this post, as I said.

Int. 12. How near were you to them when this conversation took place?

144 Ans. Within three or four feet, sir.

Int. 13. Where was she in fact hauled on Sunday, as to the place indicated by Captain Colman?

(Objected to as incompetent and immaterial.)

Ans. She was not hauled within twenty or twenty-five feet of where Captain Colman told the mate.

Int. 14. Had you any conversation with the mate of the "Bowdoin," at the time she was hauled in, in relation to her not being hauled to the place indicated by Captain Colman? if yes, state what was said.

(Conversation with mate objected to as incompetent and immaterial.)

Ans. I asked the mate if he was going to haul any further ahead; he said, no; if he did, he would have to come up with his martingale; there is nothing further.

Int. 15. Did you see the "Bowdoin" on Monday morning, after she was injured?

Ans. Yes, sir.

Int. 16. Did you, or not, notice that her masts were out of line?

Ans. Yes, sir.

Int. 17. Did you see her again after she was hauled ahead to her berth and had grounded?

Ans. Yes, sir.

Int. 18. How were the masts then?

Ans. They appeared to be more straight up and down than they were before more in their place.

Cross-examination.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. To what vessel are you now attached, and where is said vessel?

Ans. I don't belong to any vessel.

Cross-int. 2. How long since you left the vessel you were last attached to?

Ans. About the 20th of last August. (The witness then requested that the question should be repeated, saying that he thought he might have misunderstood it; and to question repeated said) Six days ago; last Tuesday.

145 Cross-int. 3. What vessel did you leave a week ago, and where is she now?

Ans. The "Elvie Davis;" on her way to Philadelphia.

Cross-int. 4. Where was she when you left her?

Ans. Cambridgeport.

Cross-int. 5. Who is captain of her?

Ans. Johnson; I can't give his first name.

Cross-int. 6. In answer to the second cross-interrogatory, why did you mention the 20th of August? What took place then?

Ans. I left the schooner "Mary D. Haskell" at that time.

Cross-int. 7. Where was she when you left her?

Ans. East Boston.

Cross int. 8. When did the "Elvie Davis" arrive in Boston or Cambridgeport?

Ans. A week ago last Sunday.

Cross-int. 9. When did you first know, since a week ago last Sunday, that you were to be called as a witness in this case?

Ans. Last evening.

Cross-int. 10. How did you know it then?

Ans. Received a note.

Cross-int. 11. From whom did you receive a note?

Ans. Mr. Oakman.

Cross-int. 12. Have you seen Mr. Oakman since you arrived a week ago last Sunday, before you saw him here to-day?

Ans. At the Mariner's House, this morning.

Cross int. 13. Is that the only time?

Ans. Yes, sir.

Cross-int. 14. Did you inform Mr. Oakman of your arrival in this port?

Ans. No, sir.

Cross-int. 15. Do you know how he knew you were here?

Ans. No, sir.

Cross-int. 16. Where did your vessel lie on the Sunday the "Bowdoin" hauled in?

Ans. At Mr. Oakman & Eldridge's dock.

Cross-int. 17. At what part of the dock? State fully.

Ans. The western pier, near the end.

146 Cross-int. 18. What do you call the western pier; the one the "Bowdoin" was injured at, or the other?

Ans. The other, sir.

Cross-int. 19. What is your age?

Ans. About thirty.

Cross-int. 20. Where was the "Bowdoin" before she commenced to haul in, on Sunday?

Ans. Lying at the eastern pier.

Cross-int. 21. At what part of the pier?

Ans. At the end, sir.

Cross-int. 22. At what time did she commence to haul in?

Ans. Between one and two.

Cross-int. 23. How long did it take her to haul in?

Ans. I should judge an hour.

Cross-int. 24. When did you go aboard of her?

Ans. On Sunday, betwixt one and two.

Cross-int. 25. Before or after she commenced to haul in?

Ans. After she commenced to haul in.

Cross-int. 26. Did you leave her before, or after she got to the place where she was injured?

Ans. After she got there.

Cross-int. 27. At whose request did you go aboard of the "Bowdoin" that day?

Ans. The mate asked me to lend him assistance to get into the dock.

Cross-int. 28. When did Captain Haskell leave the "Bowdoin?"

Ans. About the time that we left off hauling; soon after.

Cross-int. 29. Did he remain on board until the "Bowdoin" got to the place where she was injured?

Ans. Yes, sir.

Cross-int. 30. Was he heaving at the capstan with you, helping to haul the "Bowdoin" in?

Ans. No, sir.

Cross-int. 31. (De bene.) Have you talked about the conversation you heard between the mate and Captain Colman which you have testified to, and the conversation between yourself and the mate, since the time you testified in the district court in this case?

Ans. Only I spoke about it to Captain Haskell, aboard the
147 vessel. (To question repeated:) I have talked with Captain Haskell since the time that he was here from New York.

Cross-int. 32. (De bene). When was that?

Ans. Since he gave his deposition.

Cross-int. 33. (De bene.) You testified in the district court, did you not, that down to the time of your testifying in that court you had not spoken of these conversations, and had never thought of them since they occurred?

Ans. Yes, sir, I testified to that.

Cross-int. 34. (De bene.) How did you happen to be present when the conversation between the mate and Captain Colman took place?

Ans. I was standing on the cap-sill of the wharf.

Cross int. 35. (De bene.) How did you happen to be there?

Ans. I was looking round the vessel at the time—looking at the vessel across the dock.

Cross-int. 36. Looking at what vessel?

Ans. The "Mary D. Haskell."

Cross-int. 37. (De bene.) Can you say on your oath that Captain Colman used the words "after combings," in speaking of the main hatch?

Ans. Yes, sir.

Cross-int. 38. (De bene.) Did you not testify in the district court that he told the mate to bring his main hatch abreast of a certain post, without using the words "after combings?"

Ans. I think not.

Cross-int. 39. (De bene.) Can you swear that you used the words "after combings," in testifying in the district court?

Ans. I can.

Cross-int. 40. (De bene.) Did you notice, on Saturday afternoon, at the time of the alleged conversation between Captain Colman and the mate, a movable staging on the bulkhead above you?

Ans. Yes, sir.

Cross-int. 41. (De bene.) How was this stage placed on the bulkhead?

Ans. Angling with the staging; angling with the bulkhead.

Cross-int. 42. (De bene.) Was the end that is run out to vessels
148 further up or further down the wharf than the other end? By down the wharf I mean towards the sea.

Ans. I don't seem to remember, now.

ALFRED TORREY.

Deposition of GEORGE MANNING, a witness for respondents and appellants; taken before Charles F. Walcott, notary public, April 21st, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. My name is George Manning; Charlestown; my business now is engineer.

Int. 2. What was your business in October and November, 1866?

Ans. I was second foreman then of Messrs. Oakman & Eldridge's wharf?

Int. 3. How long had you then been second foreman there?

Ans. I had been, I should say, between two and three years.

Int. 4. How many berths for vessels to unload were there on the westerly side of Messrs. Oakman & Eldridge's easterly wharf?

(Objected to as immaterial.)

Ans. I think two; there are two there, at any rate. I don't think you could unload a third one on the side—a large vessel.

Int. 5. What is there, if anything, in the wharf separating the upper berth from the berth below?

(Objected to as leading, and for substance.)

Ans. There is a jog in the wharf.

Int. 6. Are you now in the employ of Messrs. Oakman & Eldridge; if not, when did you leave their employ, and where are you now employed?

Ans. I am not now in their employ. I left Mr. Oakman a year ago last November; I work at Mr. B. M. Clark's, 71 Broad street; I
149 run a stationary engine there; I have been there ever since I left Messrs. Oakman & Eldridge.

Int. 7. Were you in Oakman & Eldridge's employ when the schooner "Bowdoin" was injured?

Ans. Yes, sir.

Int. 8. On what day of the week, or month, and at what time of day, did you first learn that she had been injured?

Ans. It was of a Monday morning, about half past six, or thereabouts.

Int. 9. Where was she then lying?

Ans. She was lying—I call lying—in two berths—trying to.

Int. 10. State whether or not you ever before, or afterwards, saw a vessel lying where she was Monday morning.

(Objected to as immaterial.)

Ans. No, sir, I never did.

Int. 11. Where had the "Bowdoin" been lying the week before?

Ans. At the end of the wharf.

Int. 12. Who was in charge of her when there?

Ans. I don't know what the man's name was; they called him the mate afterwards.

Int. 13. What did he do or say, if anything, that made you consider him in charge?

Ans. Why, he came to me to know if he wasn't going in with his vessel before another vessel that was there.

Int. 14. Do you remember the name of the other vessel?

Ans. No, sir; I've forgotten the name.

Int. 15. Was he or not about the berth in which the "Bowdoin" afterwards discharged, while this other vessel was discharging in it?

(Objected to for form and substance.)

Ans. He was up and down by there—by the berth there.

Int. 16. State fully how the "Bowdoin" was lying on the Monday morning when you first saw her.

Ans. When I first saw her she was aground forward—the aft end was not; she lay twisted; she didn't lay parallel with the wharf, but she lay twisting with the berth, crossways some call it; the forward end of the vessel was in close to the wharf, her stern was away; she was heeled off.

150 Int. 17. Had she or not any fenders in between herself and the wharf?

(Objected to for form and substance.)

Ans. She had one fender in.

Int. 18. How large was this fender?

Ans. Well, I should say it was about six inches through it; up and down fender.

Int. 19. What fenders, and what kind of fenders, do coal vessels usually carry and use while at the wharfs where they unload?

(Objected to as immaterial.)

Ans. They usually carry fore and aft fenders six or eight feet long.

Int. 20. State whether or not you heard the mate of the "Bowdoin" say anything that Monday morning as to why the vessel was placed where she was; if you did, what did he say?

(Objected to as incompetent and immaterial.)

Ans. He told Captain Colman—I heard him—I was standing close beside him—that the captain didn't come up where he told him; he said that the reason was, that he should have to come up with his martingale if he did.

Int. 21. State whether or not you heard the captain of the "Bowdoin" say why he did not place her farther up.

Ans. He said his martingale would come on the wall at the end of the dock.

Int. 22. What is done with the martingale of a vessel when it comes on the wall?

(Objected to as immaterial.)

Ans. They generally come up with the martingale—let her up.

Int. 23. How is this done, and how much time does this take?

(Objected to as immaterial and incompetent.)

Ans. Well, some of the mates there have come up with the martin-

gale; I should think it took them from three to five minutes; there are two chains run from the martingale to the vessel, one on each side on the forward part, fastened with a dead-eye with ropes through it like a block; they generally there used to undo one side, unreeve it, and let the martingale swing over—swing up—if there was any danger of its striking.

Int. 24. Describe the movable wheeling stage used at that time
151 on Oakman & Eldridge's wharf; tell how long and wide it was, and how heavy.

Ans. Well, I should think it twenty-six or twenty-seven feet long; I think it was; I should think it was in the neighborhood of seven or eight feet wide at one end—the end over the vessel. I couldn't say how heavy it was; it was tremendous heavy, and took a number of men to handle it; we used to get eight or ten men up on the run to handle it.

Int. 25. How was this stage lying that Monday morning at the time you first saw the "Bowdoin?"

Ans. She lay swung 'round on the run on top of the bulkhead.

Int. 26. When was the stage placed there, as it lay on Monday morning, when you first saw the vessel?

Ans. She was placed there Saturday.

Int. 27. How were the corners of this stage placed as to the side of the run next the berth, and as to the upper end of the run?

Ans. The whole end of the stage lay over the upper end of the run, and one corner lay over the side of the run next the dock. When we were done discharging a vessel, the wheeling stage was hauled in until it balanced, and then swung round; this brought the end towards the vessel down the wharf; this brought one corner of the outer end of the wheeling stage projecting over the side of the run, and one corner on to the run, and the whole upper end of the stage over the upper end of the run; it was in that position this morning, when I first saw the "Bowdoin."

Int. 28. How far, as nearly as you can state, was the corner of this stage that was farthest down the wharf above the upper combings of the schooner's main hatch?

Ans. I should say that the inside corner of the outer end was farthest down the wharf; I should say, as near as I can recollect, four or five feet from the furthest corner down the wharf to the upper combings of the schoner's main hatch.

Int. 29. What was done with the "Bowdoin" that Monday, if anything? If you say she was moved up, how much?

Ans. When the tide got up, so that we could, we hauled her ahead some twenty feet and four or five inches.

Int. 30. What was done with this stage, if anything, before the "Bowdoin" was moved ahead, and why was this done?

152 Ans. I got the men at seven o'clock, and went to work and moved the stage down the run to meet with her hatch, abreast of it; we hitched on the halliards, and other purchases that we generally used to swing it; when we got everything ready, we drew it out, but it wouldn't reach; the vessel was too far away; we couldn't work; I did that to see if we couldn't ease the vessel as she lay—to see if we couldn't lighter her up aft. I calculated to get out some coal.

Int. 31. As you found the "Bowdoin" on Monday morning, how much was she below her berth?

(Objected to as incompetent and immaterial, and for form.)

Ans. Some twenty feet four or five inches.

Int. 32. After she was hauled ahead, state whether or not she received any injury.

(Objected to as immaterial.)

Ans. No, sir.

Int. 33. State whether or not she leaked any after she was hauled ahead.

Ans. No, sir; I think not.

Int. 34. Was there some coal ran into the dock at Messrs. Oakman & Eldridge's wharf, a few days before the "Bowdoin" came there; if yes, about how much?

Ans. Yes, sir; there was. I should think somewhere in the neighborhood of two or three tons; there might be four.

Int. 35. State whether or not the "Bowdoin" lay upon this pile of coal in the place where she was on Monday morning.

Ans. No, sir; I don't think she lay on the coal.

Int. 36. Why do you think she did not?

Ans. Because I don't think she laid on the coal; for, if she had, the coal would have been jammed down into the mud.

Int. 37. How was it, in fact?

Ans. The coal lay in a slanting direction from the wharf. (To question repeated.) It lay loose, light on the mud.

Int. 38. How was the mud under it; hard or soft?

Ans. Under the coal, the mud was soft.

Int. 39. After the "Bowdoin" had unloaded and hauled out, did you examine the keel-track in which she lay after being hauled ahead; if so, when did you examine it, and how many times, if more than once?

153 Ans. I examined it two or three days after she had hauled out, after the port wardens had been there; I don't recollect now exactly how many days it was; I examined it twice.

Int. 40. At what time of tide did you make these examinations; and how deep was the water in it at the stern; and how deep opposite the pile of coal?

Ans. It was low tide, just about standing still; I should say opposite the pile of coal the water was two and a half to three feet deep. At the stern I can hardly say, because her stern hung over the other berth where it was dug out; it might have been six feet deep there; I hardly think it was six feet, but at the same time it might have been.

Int. 41. State whether or not you saw the bottom of the keel-track, opposite the pile of coal.

Ans. Yes, sir; I could see the bottom, where the coal pile ran in.

Int. 42. Ran into what?

Ans. Ran into the dock, from the wharf, abreast of where the vessel lay.

Int. 43. How near to this keel-track did the coal come?

Ans. Well, I don't think there was any within a foot of it.

Int. 44. State whether or not there was any coal in the keel-track.

Ans. I didn't see any in it.

Int. 45. How are these berths at Messrs. Oakman & Eldridge's wharf as to being safe or unsafe for vessels loaded with coal to lie in?

(Objected to as immaterial and incompetent.)

Ans. I have never heard any one find any fault before this schooner "Bowdoin;" they've always laid safe enough whenever I've been 'round there. (To question repeated.) I consider them safe.

Int. 46. State whether or not this pile of coal, in your judgment, rendered either of these berths unsafe for vessels.

(Objected to as incompetent.)

Ans. I don't think it did.

Int. 47. Explain how, in your judgment, the "Bowdoin" received her injuries.

(Objected to as incompetent, the witness not having been shown to be an expert.)

Ans. I think she received her injuries by not going up into the berth where she belonged; on the bank between the two.

154 Int. 48. State whether or not business was carried on at Oakman & Eldridge's wharf on Sundays. How was the wharf left, and who, if any one, was there on Sundays?

(Objected to as immaterial.)

Ans. There was no business carried on there Sundays. Sometimes they had a watchman there on Sunday to keep the boys off. The teamsters kept their horses at the head of the wharf, and went there Sunday to feed them. There was a man lived at the head of the wharf who took care of the stable.

Int. 49. What was the appearance of the bulkhead at the place where the coal broke away and ran off as seen from the cap of the wharf or from a vessel lying at the wharf?

(Objected to as incompetent and immaterial.)

Ans. The appearance was that it broke through; it throwed the foot of one post out, and broke the board, so that the coal ran out.

Int. 50. How was the coal lying between the bulkhead and the cap-sill?

(Objected to as incompetent and immaterial, and tending to mislead the witness.)

Ans. I nailed up a plank on the cap-sill of the wharf to prevent it from running overboard; I let it lay, what there was there.

Int. 51. How was the place this vessel was in at the end of the pier, on Saturday, as to being safe or unsafe?

(Objected to as incompetent.)

Ans. I considered it safe.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) How much of a descent was there in the bottom of the dock between what you call the upper and the lower berth?

Ans. I should say the bottom of the lower berth was seven or eight feet below the other one.

Cross-int. 2. (De bene.) Do you mean that the upper end of the lower berth is seven or eight feet lower than the lower end of the upper berth?

Ans. No, sir.

155 Cross-int. 3. (De bene.) What, then, do you mean?

Ans. I mean, back in the berth where a vessel lays. The dock is dug out slanting from one berth to the other. There has to be room between the two berths, so that the head gear of the vessel in the lower berth may be clear of a vessel in the upper.

Cross-int. 4. (De bene.) How much of a descent is there from the lower end of the upper berth to the upper end of the lower berth?

Ans. I should think it was fifteen feet or more down the slope. I never measured it.

Cross-int. 5. (De bene.) Was this descent between what you call the two berths gradual or abrupt, in October and November, 1866?

Ans. I don't know what you mean by abrupt—whether you mean down square or slanting?

Cross-int. 6. (De bene.) Was it down square or slanting?

Ans. It was of a slant.

Cross-int. 7. (De bene.) How much of a slant?

Ans. Well, I couldn't say particularly. I should rather measure it before I'd say.

Cross-int. 8. (De bene.) You say, in answer to the fifteenth interrogatory, that the mate went up and down the wharf while the other vessel was discharging. Do you mean that he went to and from his vessel, which then lay at the end of the wharf?

Ans. Yes, sir.

Cross-int. 9. (De bene.) And the coal bulkhead you have spoken of was between the way the mate went up and down and the dock where the "Bowdoin" was injured, was it not?

Ans. No, sir; he went up on the west wharf, facing of it; then he crossed over the end of the dock where the martingale or bowsprit ran over, and then to the street.

Cross-int. 10. (De bene.) How wide is the dock between the east and west wharfs?

Ans. Well, I couldn't say exactly; I guess somewhere from forty to sixty feet; I guess more than that.

Cross-int. 11. (De bene.) What were your duties in October and November, 1866, as second foreman?

156 Ans. My duties were to look after the work, weigh, and see that the men done their work.

Cross-int. 12. (De bene.) Was it part of your duty to see to vessels hauling in, to see that they got into their proper berths?

Ans. Not when Captain Colman was there. I used to help him. If he wasn't there I had to see to it myself.

Cross-int. 13. (De bene.) When you swung the movable stage 'round on the run, after running it in from a vessel, did you do it by means of ropes fastened to the outer end?

Ans. We had ropes on the outer end—the halliards that held it up. We hoisted on them, to raise up the outer end, and, as we run it in, slacked on the halliards. We pried the stage up with a bar sometimes, and put a roller under, to roll it 'round on. Sometimes we hitched a purchase on to the outer end, to haul it 'round. We hitched the purchase on sometimes, because we were short of help.

Cross-int. 14. (De bene.) How much of the inner end of the movable stage projected over the upper end of the run that Monday morning?

Ans. I should think two feet, as near as I can remember now—the inner corner.

Cross-int. 15. How many hatches did the "Bowdoin" have?

Ans. I think there was two—there were two. I couldn't say whether there was a third one or not. The third one was a small hole, if there was one; I think so.

Cross-int. 16. The main hatch was about 'midships, was it not?

Ans. Yes, sir.

Cross-int. 17. And abaft of this was the after hatch, was it not?

Ans. Yes, sir; I think so.

Cross-int. 18. And it was from the after hatch that you intended to lighter the vessel, as you have stated, was it not?

Ans. Yes, sir.

Cross-int. 19. (De bene.) Now, when you moved the stage down the wharf, and ran it out to the after hatch, how far above the jog in the wharf was it?

(Objected to as assuming a fact not in evidence, the witness not having said that the stage was run out to the after hatch.)

Ans. When I got it down to get to the after hatch, it wasn't a
157 great ways above the jog. I tried, in the first place, to swing it to the main hatch.

Cross-int. 20. (De bene.) Before the vessel was hauled ahead, did you fasten the halliards to the vessel, to run the stage out to the main hatch?

Ans. I think we did before she was hauled ahead.

Cross-int. 21. (De bene.) And then did you attempt to run the stage out to the after hatch?

Ans. That is the way I handled the stage so as to get it there. I had to get the end out towards the main hatch, so that I could reach it with the rigging to haul it to the after hatch. She wouldn't reach the main hatch, where she lay, if we'd left it there, much less the after one. We were in such a hurry that we didn't notice, until we got it out there, that it was too short, come to draw it out straight.

Cross-int. 22. (De bene.) Your purpose, then, was to run the stage out to the after hatch, was it not?

Ans. That's what we meant to do—to light the after end of it as quick as possible.

Cross-int. 23. (De bene.) And this was your purpose when you commenced to move the stage, was it not?

Ans. Yes, sir.

At half-past one o'clock p. m. the hearing was adjourned until two o'clock p. m., to-day, at the same place.

At two o'clock p. m., April 21, 1868, the hearing was resumed, pursuant to adjournment, and the cross-examination of the witness continued.

Cross-int. 24. (De bene.) The run on the top of the bulkhead on the east wharf extends along both berths, does it not?

Ans. Yes, sir.

Cross-int. 25. (De bene.) After the "Bowdoin" was hauled ahead, on Monday, her taffrail was below the jog, was it not?

Ans. By taffrail you mean the stern? The stern of the vessel was below.

Cross-int. 26. (De bene.) How much below?

158 Ans. I should think seven or eight feet; I am not certain, because I have partly forgotten it now.

Cross-int. 27. (De bene.) How do you know whether the vessel leaked or not, after she was hauled ahead?

Ans. I was down into her when they were unloading.

Cross-int. 28. (De bene.) How do you know that the mud was soft under the coal?

Ans. Because, take a pole, or anything, and it would go down into it easy. You could jam coal with the pole right down into the mud. When the pole struck the coal, it would jam it into the mud.

Cross-int. 29. (De bene.) Did you stick a pole through the coal into the mud?

Ans. When I would put the pole into the coal, it would go right down into it easy, and into the mud, because my pole would be all mud when I pulled it up.

Cross-int. 30. (De bene.) Now, how far out from the wharf did you push your pole through any coal into the mud?

Ans. I should say it was six feet, certain; I should say six or seven feet, as nigh as I can remember now.

Cross-int. 31. When you examined the keel track, did you go in a boat; and, if so, who was with you?

Ans. I went once alone, when the water was still, and I went once

with one of the men from the wharf; I took him to handle the boat the first time I went. I went in a boat both times.

Cross-int. 32. How far up the keel track above the jog did you go in a boat at either of the above times you have mentioned?

Ans. I went up—I think I got the boat up quarter way, up the upper track. It wasn't deep enough to get the boat up further—a small, light boat.

Cross-int. 33. How many feet above the jog should you say you went at either of the times mentioned?

Ans. I should think it was near twenty feet—I couldn't say for certain—that I could get the boat up.

Cross-int. 34. (De bene.) State what was done to the bulkhead and the coal inside of it, after the coal ran out from behind the bulkhead into the dock.

159 Ans. I got the men there, and stood there with them, and had it trimmed out inside the bulkhead, further towards the street; we trimmed it down so that it couldn't run, and made a cob-house wall to hold the coal—such a wall as we usually build to hold coal when we have no bulkhead. By trimming, I mean we shovelled it.

Cross-int. 35. (De bene.) This cob-house was built inside of the bulkhead, was it not?

Ans. Yes, sir.

Cross-int. 36. (De bene.) How much of a break was there in the bulkhead? Describe it.

Ans. It throwed out the foot of one post, and broke the boarding out, so as to let the coal through. The bulkhead wasn't full inside at the time.

Cross-int. 37. (De bene.) How many boards were broken?

Ans. Well, I couldn't say how many of them were broken; it burst the nails out of them, so that the ends came off from the post—sprang out; some of them were broken.

Cross-int. 38. (De bene.) Do you mean the ends on the post that was broken?

Ans. I mean the boards that were fastened onto the post that tripped out, where they butted onto that post; all the boards didn't butt onto that post; they broke joints.

Cross-int. 39. (De bene.) How high up from the wharf did the break in the boards extend?

Ans. I should think it was six foot high; five or six, somewhere 'round there.

Cross-int. 40. (De bene.) You mended this bulkhead, did you not?

Ans. I mended it as much as I could, to stop the coal as it was.

Cross-int. 41. (De bene.) You nailed the boards onto the post again, and got the post as near as you could, into its old place, did you not?

Ans. No, sir; I couldn't get it back to its old place, because we couldn't get the coal away that was on the wharf; we tied it back as well as we could; we nailed on boards—we couldn't nail on the old ones, as they were in no shape; we nailed on boards, so as to stop everything we could stop.

Cross-int. 42. (De bene.) How near to its old place did you get the post, when you tied it back?

160 Ans. Well, I couldn't say exactly; I should think the bottom of it was out three or four feet.

Cross-int. 43. (De bene.) How far was the bottom of the post from the cap-sill of the wharf, after the post gave way and was tied in, as you have stated?

Ans. Well, I should think it was a foot and a half in from the cap.

Cross-int. 44. (De bene.) If you trimmed away the coal inside the bulkhead, why couldn't you get the post back into place?

Ans. Because we didn't trim away clear to the ground.

Cross-int. 45. (De bene.) The object of nailing a board on the cap-sill was to keep the coal from running over, if the bulkhead should give way again, was it not?

Ans. No, sir; it was to keep the coal that was between the bulkhead and cap-sill from running overboard, when they stepped on it; it wasn't to keep it from running from the bulkhead.

Cross-int. 46. (De bene.) How long was this board, and how high was it above the top of the wharf?

Ans. I couldn't say how long it was; it was a long board, a plank. I should think the plank was about a foot wide, and spiked in, as high up as I could have it and make it hold.

Cross-int. 47. (De bene.) Your object in putting the board there was to save the coal, was it not?

Ans. Yes, sir; the coal that lay there.

Cross-int. 48. (De bene.) Now what was done with this coal that lay between the bulkhead and the cap-sill of the wharf?

Ans. It was left lying there, most of it.

Cross-int. 49. (De bene.) Until when was it left there?

Ans. Well, some of it was there when I left the wharf.

Cross-int. 50. (De bene.) Was none of this coal between the bulkhead and the cap-sill, at any time removed?

Ans. We removed off some from the top of it when we first trimmed it back, so that it shouldn't be running away from us.

Cross-int. 51. (De bene.) Was this all the coal outside the bulkhead that was removed at any time?

Ans. That's all that I remember of, while I stopped there at the wharf.

Cross-int. 52. (De bene.) Now, how deep was this coal between
161 the bulkhead and the cap-sill, after you trimmed back the part you have stated?

Ans. I should think it was about three feet, next to the bulkhead; between two and three. There wasn't anything on the cap-sill, except there might have been a piece or two; we got that as clear as we could to travel on.

Cross-int. 53. (De bene.) Why didn't you put this coal, which lay between the bulkhead and the cap-sill, behind the bulkhead?

Ans. Because we hadn't time to do it, we were so crowded with the work, and considered it all safe as it lay.

Cross-int. 54. (De bene.) How much coal, in quantity, did you leave between the bulkhead and the cap-sill?

Ans. Well, I couldn't say for certainty; there might be from a half to three-quarters of a ton; there might be a little more; it's so long ago, I've got it out of recollection.

Cross-int. 55. (De bene.) Have you any distinct recollection that the coal was piled up outside of and against the bulkhead two or three feet, after you had trimmed back all that was put inside the bulkhead?

Ans. Yes, sir; I know the coal was left there, against it; as to the quantity of it, I can't seem to recall it to my mind.

Cross-int. 56. (De bene.) Have you any distinct recollection of the depth of it against the bulkhead?

Ans. Well, I think it was two to three feet of it, at any rate; we didn't trim down to the bottom within two or three feet, as it lay

Cross-int. 57. (De bene.) Do you give that as your present impression, or as a distinct recollection.

Ans. That is to the best of my recollection at this time.

Cross-int. 58. (De bene.) Where was the up-and-down fender on the "Bowdoin," on Monday morning?

Ans. I think it hung over her quarter; I think it was.

Cross-int. 59. (De bene.) What part do you mean by her quarter?

Ans. Well, toward the forward end of her.

Cross-int. 60. (De bene.) How far from the bow?

Ans. It was right abreast of her rigging; forward rigging, I think.

Cross-int. 61. (De bene.) How far was the keel track in the upper berth out from the wharf?

162 Ans. I couldn't say, certain; I've fairly forgotten how far it was. I had the minutes, but I've lost them—the whole.

GEORGE MANNING.

Deposition of JOSEPH H. ORCUTT, a witness for libellees and appellants; taken April 22d, 1868, before Charles F. Walcott, notary public.

Interrogatories by John C. Dodge, esq., in behalf of libellees and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business; and how long, and where, you have been engaged in your present business.

Ans. Joseph H. Orcutt; I reside at No. 132 High street, Charlestown; I am a clerk for Oakman & Eldridge; I have been there for eleven years last November. I am still in their employ.

Int. 2. What precisely is your business with them; what do you do there?

Ans. I keep their books, and weigh their coal just as it is delivered, and do all the writing in the office, except what Mr. Oakman does himself.

Int. 3. How far is the counting-room where you write, from the place where vessels come to discharge?

Ans. The counting-room is at the end of the wharf, next the street; I can't say how far it is; I have never heard it stated. I think it is at least three hundred feet from the head of the wharf where the office is, to the head of the dock. By the head of the dock, I mean the end of the dock nearest the street.

Int. 4. How many berths for vessels to discharge are there on the easterly side of the dock; and what, if anything, marks the division between them?

(Objected to as incompetent and immaterial.)

Ans. Two; there is what they call a jog, about four feet more or less, where the wharf narrows; a square jog.

163 Int. 5. Of what materials is the wharf adjoining the upper berth built, and of what material the wharf that adjoins the lower berth?

Ans. By the upper berth, you mean next the land; the wharf there is of stone—solid wharf; the wharf adjoining the lower berth is what we call a pier, or pile wharf.

Int. 6. How are these berths as to being safe or unsafe for vessels loaded to lie in?

(Objected to as incompetent.)

Ans. Both perfectly safe.

Int. 7. Do you remember the schooner "Bowdoin" coming to Oak-

man & Eldridge's wharf, in October, 1866, to unload? if you do, state, if you remember, how long she arrived before she got a berth to haul to, and what caused the delay.

Ans. She came there Tuesday, October 23d, 1866; she arrived Tuesday, and two vessels ahead of her discharged, and the "Daybreak" was out on Friday, leaving the berth for her on Saturday.

Int. 8. During this delay was there, in your hearing, any discussion about hauling in between Mr. Oakman and the officers of the "Bowdoin;" if yes, with which of them, and what was said?

(Objected to as incompetent and immaterial.)

Ans. There was; with the mate and Mr. Oakman; the mate came in to claim a berth which was given to another vessel, and Mr. Oakman told him that it wasn't his turn, and that he must wait for the berth of the "Daybreak;" and the mate, after some little talk, went out with the understanding that he should take the berth of the "Daybreak."

(Answer objected to as incompetent and immaterial.)

Int. 9. State whether you, at any time, heard Mr. Oakman tell him where to haul his vessel after the "Daybreak" went out; if yes, state what he told him.

(Objected to as last.)

Ans. Yes, sir; when he came in to claim a berth, Mr. Oakman told him to haul into the berth then occupied by the "Daybreak," and he went out with that understanding.

(Objected to as immaterial.)

Int. 10. Do you know on what day this was, and what time of day?

Ans. In the afternoon of Friday he came in—I think it was; it must have been Friday—and, I think, in the afternoon, because Mr.
164 Oakman is only there part of the day, and it couldn't have been the morning.

Int. 11. How far was the "Daybreak" then lying from where you were talking?

Ans. Three hundred feet—if three hundred feet is the distance; we were in the office; three hundred feet, more or less.

Int. 12. Supposing the "Bowdoin" to be then lying at the pier on the western side of the dock, how near to the "Daybreak" would the mate pass, in going to the "Bowdoin," across the head of the dock?

Ans. He would pass within forty or fifty feet—not to be exact about it; he would pass within half the width of the dock and half the width of the west wharf; I should think that would be fifty feet. If he crossed the head of the dock, he might pass right under the jib-boom of the "Daybreak;" he might do so. If he went from his vessel up to town, supposing her to have been at the west wharf, going up the centre of the wharf, I should say he would go within fifty feet of the "Daybreak." Going to town, to Boston, or the counting-room, he would pass the same track up the wharf; that is, naturally, but, in fact, it would be as easy for him, if he were going to many places in town, to cross over from one wharf to the other; they are used together as one wharf, and open.

Int. 13. Did you see the "Bowdoin" on Monday morning following this Friday of which you have spoken; if you did, how early did you see her, and how came you to see her?

Ans. I saw her at seven o'clock Monday morning, or a few minutes after, possibly; the captain of the "Bowdoin" met me at the head of the wharf and told me that his vessel was in trouble; and I went down as soon as I could get time. I ran down on the west wharf, just far

enough to see her. I did not go down on the east wharf until after she was in her berth—in her place; I don't recollect that I did.

Int. 14. Where was she lying when you first saw her, Monday, and in what condition was she?

Ans. She was lying with her bow in the berth where she ought to have been, and her stern off from the wharf and over deep water; that is to say, I mean her bow was in the berth where her whole body should have been, but too far astern.

165 Int. 15. How much was she below the place where vessels of her size lie, in the upper berth?

(Objected to as immaterial.)

Ans. I suppose about twenty feet.

Int. 16. Was she afterwards hauled ahead?

Ans. She was.

Int. 17. After she was hauled ahead, did you see her? If yes, how often?

Ans. Twice, certainly; I have no distinct recollection of but two occasions, but probably I saw her half a dozen.

Int. 18. How did she lie then? I mean after being hauled ahead.

Ans. She lay well, then, as vessels always do in that place.

Int. 19. Do you know about some coal running off the wharf? If yes, how much was there of it, as nearly as you can judge?

Ans. Four or five tons, not over five.

Int. 20. Has that coal ever been taken up out of the dock?

Ans. No, sir; it's all there now.

Int. 21. How, if at all, does it affect the safety of the berths for vessels?

(Objected to as immaterial and incompetent.)

Ans. It doesn't affect the berth at all.

Int. 22. How many vessels, if any, had unloaded in the upper berth before the "Bowdoin," after the coal ran into the dock? and, if you know, how many since?

Ans. The brig "S. P. Smith" and the "Daybreak" were in that berth before the "Bowdoin;" the coal came out of the "S. P. Smith," and of course it lay there while she was discharging the balance of her cargo; and then lay there while the "Daybreak" was discharging; and then the "Bowdoin;" there have been a good many vessels in there since; I couldn't give the number without referring to the books; I should think a dozen, not all of them coal vessels; say five coal vessels since the "Bowdoin."

Int. 23. What were the other vessels loaded with?

Ans. Next vessel after the "Bowdoin" was a cement vessel; several vessels with bricks; one or more with sand; and one or more with lumber; and one lay there empty, for winter quarters, last winter.

166 Int. 24. Did you examine this pile of coal, either before or after the "Bowdoin" went out? If you did, how near to it were you?

Ans. I examined it both before and after. I was on it while the "Bowdoin" was in the berth; and after the "Bowdoin" was out, and the cement vessel was in there, I took a boat and went alongside of it, astern of the cement vessel.

Int. 25. At what time of tide was it when you made these examinations? State as to both of them.

Ans. It was low water both times.

Int. 26. How much of the coal was under water?

Ans. None, excepting the lower edge of it; a very little.

Int. 27. When you were on the pile of coal, before the "Bowdoin" went out, how near to her did any of it come?

Ans. The lean part of the vessel came abreast the coal, and rose right up away from it, so that it didn't touch her or come near touching her. I mean by the lean part of the vessel what they call the run of a vessel, I believe; I am not much acquainted with vessels; I have a general acquaintance with vessels, but some parts I couldn't name.

Int. 28. Could you tell by the appearance of the coal whether she had ever lain on it? if you could, how?

(Objected to as incompetent.)

Ans. I could tell that she hadn't laid on it from the fact that the coal lay on soft mud, and had no appearance of having been laid on.

Int. 29. When you examined from the boat, did you notice how near any of the coal went to the keel track?

Ans. I noticed that only the thin edge of the pile ran down towards the keel track; that no coal of any consequence went down to the keel track.

Int. 30. What do you mean by none of any consequence? how much, if any, went as far as the keel track?

Ans. I should say only a few pieces that would scatter and roll off the pile; no body of coal, I mean to say; a thin layer, possibly.

Int. 31. How was the mud there, hard or soft; and how do you know?

Ans. Soft; because I stuck my oar into it.

Int. 32. Where, and how near the wharf, and how near the coal, did you strike the oar?

167 Ans. Near enough to touch the coal. I was in the boat astern of the cement vessel; I should think it was six or seven feet from the wharf I stuck the oar in the coal.

Int. 33. How did you find the mud there, hard or soft, and how deep the coal?

Ans. Soft; where I stuck the oar, it was soft; it was soft everywhere in the dock. Where I stuck the oar, perhaps the coal was a foot deep; hardly that, though.

Int. 34. What were the appearances on the wharf where this coal had run down?

(Objected to as incompetent and immaterial.)

Ans. The only appearance was coal, from the edge of the bin scattered to the edge of the wharf. The bin had broken away and let the coal out.

Int. 35. Did you ever examine the keel track where the "Bowdoin" lay, after she and the vessel with cement had gone out?

Ans. I have no recollection of so doing, not nicely. I have looked there, but not very carefully; I have not been down there; I have looked from the wharf, but have not been down there in a boat, or anything of that kind.

Int. 36. Have you ever looked at low water of the high tides?

Ans. I couldn't tell what tides, or when; I am frequently down the wharf, and take a look there. I couldn't name the time when, since the vessels went out.

Int. 37. Have you or not ever seen any coal in the keel track?

(Objecting to, the witness having already answered the question.)

Ans. I have not seen any.

Int. 38. When you first saw the "Bowdoin," on Monday morning, state whether or not she was parallel to the wharf. If not, how was she in this respect?

(Objected to, the witness having already stated the position of the vessel.)

Ans. I should say, not parallel to the wharf. Her bow was in the berth where she should have been, but her stern was off from the wharf and over deep water. I don't mean to say that her bow was where the bow ought to have been, but simply in the berth, where the vessel should have been.

168 Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) You mean that the part of the wharf above the jog is built of stone, and the part below the jog is built of piles, do you not?

Ans. Yes, sir.

Cross-int. 2. (De bene.) How do you fix the date of the arrival of the "Bowdoin" to be the 23d of October?

Ans. We enter them on our books as fast as they arrive. That's the date the book shows.

Cross-int. 3. (De bene.) When did you last look on your book to ascertain this date?

Ans. I looked a few days ago.

Cross-int. 4. (De bene.) You have no recollection, aside from the book, whether it was on the 22d or 23d, have you?

Ans. No, sir; no more than this. I have carried it along in my head; it has never been out of my mind. I looked at the look to refresh or confirm my memory; I looked at it recently for that purpose.

Cross-int. 5. (De bene.) You put down the date when the master reports to you, do you not?

Ans. Yes, sir.

Cross int. 6. (De bene.) At what time on Friday did the "Daybreak" go out?

Ans. I can't say at what time; I didn't see her go out at all.

Cross-int. 7. (De bene.) Can you tell whether it was in the morning or afternoon?

Ans. It was in the afternoon.

Cross-int. 8. (De bene.) When did you last see the "Daybreak" that Friday, before she went out of the berth where she has been discharged?

Ans. I have no particular recollection about the "Daybreak;" I knew she was in there. I did not go aboard of her; I had no occasion to go aboard of the vessel.

Cross-int. 9. (De bene.) The "Daybreak" was hauled in, at high tide, when she came in to discharge, was she not?

Ans. It must have been at high water, because a vessel can't
169 go in at low water. I only know that in a general way; because a vessel can't come in unless the water is up.

Cross-int. 10. (De bene.) Do you remember what day, and what time of day the "Daybreak" hauled in?

Ans. I do not.

Cross-int. 11. Do you know whether the "Daybreak" grounded in her berth, before discharging part of her cargo?

Ans. A vessel grounds at every tide. (To question repeated.) I do not.

Cross-int. 12. (De bene.) At the time you were on the pile of coal, when the "Bowdoin" was in her berth, was any one on the coal with you; if so, who?

Ans. There was the captain of the "Bowdoin" and Captain Paine, one of the port wardens.

Cross-int. 13. (De bene.) At this time part of the coal was under water, was it not?

Ans. The lower edge of the pile was under water; most of the pile was out of water.

Cross-int. 14. (De bene.) You could not see where the coal ended under water, could you?

Ans. I don't know as I could. It may have run into the deep berth more than I could see. It might have run off into the after-part of the berth somewhat, but none of any amount.

Cross-int. 15. (De bene.) At the time you went into the berth, who went with you?

Ans. No one.

Cross-int. 16. Was the stern of the cement vessel above or below the jog?

Ans. Above the jog.

Cross-int. 17. How far above?

Ans. I think twenty feet, though I have no means of determining very nicely.

Cross-int. 18. How long was the pile of coal in the dock?

Ans. Perhaps twelve feet. When I say that, I mean what it would scatter each way; I don't mean that the body of the coal was of that size, but some of it would sprinkle that distance.

170 Cross-int. 19. Now, how was the stern-post of the cement schooner, in reference to the centre of this pile of coal?

Ans. Well, it was up past ahead of the main body of the pile.

Cross-int. 20. How deep was the pile of coal above the mud, in its deepest part?

Ans. I couldn't tell that without knowing the form of the bed of mud it fell into. I shouldn't suppose it was over a foot and a half deep, at any place.

Cross-int. 21. (De bene.) How much coal was there scattered on the wharf, between the cap-sill and the coal-bin at the time the "Bowdoin" hauled in?

Ans. I didn't see it just at that time, but a ton, more or less—two tons possibly.

Cross-int. 22. (De bene.) When did you see a ton or two tons scattered there?

Ans. I don't know when; I only know when I was down there, I saw the place where the bin had started and the coal ran in; I merely make that estimate judging from the distance; I wasn't thinking of it at the time.

Cross-int. 23. (De bene.) There was no difficulty in passing between the cap-sill and the coal that was scattered on the wharf, was there?

Ans. To pass along there, you must pass over the coal; it filled the space between the capsill and the bin, I suppose.

Cross-int. 24. (De bene.) Was not this coal on the wharf, outside the bin, cleared away before the "Bowdoin" went in?

Ans. I think not; I am not positive about that—that is to say, I am not positive when it was cleared up. I am positive that I saw coal there after the break, but can't say when it was cleared up.

Additional interrogatories by Mr. Dodge, in behalf of respondents and appellants, and answers of the witness thereto.

Int. 39. What, if anything, did you say to the captain of the "Bow-

doin" about the pile of coal, while you and he were on it, and about his vessel having lain on it, and what did he reply?

(Objected to as leading, incompetent, and immaterial.)

Ans. I called his attention to the absurdity of the idea, that
171 that quantity of coal could have injured his vessel at all. He said, "Well, something has hurt her." That's all.

Int. 40. What makes you think it was Captain Paine that was there at the time?

Ans. Well, I know Captain Paine very well; that is, he has been a frequent visitor at the wharf in his business as port warden; I know him very well.

Int. 41. On what day was this? How long after the Monday morning when the "Bowdoin" was injured?

Ans. I don't recollect, distinctly, but judge that it was Tuesday forenoon.

JOSEPH H. ORCUTT.

Deposition of GEORGE W. WHITE, a witness for respondents and appellants, taken April 22, 1868, before Charles F. Walcott, notary public.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. George W. White; Charlestown; I suppose I should be termed now a manufacturer.

Int. 2. What opportunity, if any, have you had to become acquainted with vessels, wharfs, and docks?

Ans. I was on the wharf, as occupant and owner, twenty-two or three years. I owned the wharf up to 1861 or '2; then I sold out my wharf property; I occupied up to 1861 or '2; when I first went on the wharf, I hired it; afterwards, owned. For the last twenty-eight years, there has been no time that I have not owned parts in vessels.

Int. 3. For what purpose or business did you occupy a wharf?

Ans. I occupied it for a lumber wharf; that was the principal business.

172 Int. 4. Did you keep it yourself?

Ans. I did.

Int. 5. Are you acquainted with the docks and wharfs in Charlestown occupied by Oakman & Eldridge; if so, what opportunities have you had to become so acquainted?

Ans. Yes, I am acquainted with it, and my wharf was the adjoining wharf to theirs. My wharf was but about one hundred feet from theirs, and what little business I have had, since I sold out, I have gone into Oakman & Eldridge's dock; sent vessels that came to me there, and kept up my acquaintance with their wharf.

Int. 6. Did you see the schooner "Bowdoin" there in October, 1866, at the time she was injured? If you did, on what day of the week, and at what time of day, did you first see her?

Ans. I saw the schooner "Bowdoin" there; it was in the fore part of the day; I think somewheres before twelve o'clock; I think it was Monday.

Int. 7. How many berths for vessels to unload are there at the wharf where the "Bowdoin" was hauled; I mean how many at the side of the wharf where she was hauled?

(Objected to as immaterial.)

Ans. That would depend something on the size of the vessels you

had there; there was one shoal-water berth for a small vessel, and two deep water berths for small vessels, or one for a large one.

Int. 8. What, if anything, in the wharf marked the division between the shoal-water berth and the deep-water berth or berths?

(Objected to as immaterial and incompetent.)

Ans. Well, the shoal-water berth, the side of it, was laid up with a stone wall; the deep-water berths were with piles. They couldn't make a deep-water berth where there was a stone wall; couldn't dig it out, because it would have undermined the stone.

Int. 9. How is the wharf opposite the deep-water berths as to coming out flush with the wharf opposite the shoal-water berth?

Ans. I think, if I remember right, there is a jog, a small jog in it?

Int. 10. When you first saw the "Bowdoin," as you have said, how was she lying as to the deep-water berth and the shoal-water berth?

Ans. She wasn't in either berth; she was partially in one and
173 partially in the other; that is, she wasn't wholly in the shoal-water berth or wholly in the deep-water berth; she hung over the berth.

Int. 11. Do you or not remember whether she was hauled ahead that day, after you first saw her?

Ans. Well, that would hearsay; I don't know it of my own knowledge. They told me they would haul her ahead when the tide was up; she was aground when I was there; I wasn't there when they hauled her ahead.

Int. 12. Did you see her afterwards; and if so, when; and had she then been hauled ahead?

Ans. Yes, I saw her the next day, or the day after the first time I saw her; she had been hauled ahead.

Int. 13. Did you see in that dock some coal that had run off the wharf?

Ans. I did.

Int. 14. How much of it do you think there was?

Ans. Well, I should judge there might be five or six tons of it, looking down on to it.

Int. 15. Did you look on Monday at that pile of coal? if you did, state whether or not the "Bowdoin" was resting upon it.

(Objected to for form and substance.)

Ans. I did; she was not touching it.

Int. 16. Had she or not, in your opinion, ever lain upon it?

(Objected to as incompetent.)

Ans. My opinion is, she never did; the mud was so soft, that if she had meddled with it, it would have gone all out of sight.

Int. 17. What, in your opinion, caused the damage to the "Bowdoin?"

(Objected to, witness not being shown to be an expert.)

Ans. Carelessness; that's my opinion.

Int. 18. State whose carelessness, and how had it caused the damage to the "Bowdoin?"

(Objected to as last.)

Ans. I can't say, of my own knowledge, whose carelessness; whoever had charge of the vessel was the careless part; the other part was her lying partly in one berth and partly in the other—by not being hauled as a vessel ought to be.

174 Int. 19. State particularly how, in your opinion, lying partly in one berth and partly in the other had caused the damage to the "Bowdoin."

(Objected to as last.)

Ans. She was entirely aground forward, and her stern part partially waterborne; consequently, it gave the vessel a twist; she heeled off, and it gave her what we term a very bad twist.

Int. 20. Was she or not lying parallel to the wharf, opposite the shoal-water berth?

(Objected to as immaterial.)

Ans. The stern lay off more than the bow?

Int. 21. Are or not vessels ordinarily furnished with fenders; if they are, with what kind of fenders?

(Objected to as incompetent and immaterial.)

Ans. Yes, sir, they are; some have up-and-down fenders, what we so term, from three to six feet long, and others have fore-and-aft fenders; they are from ten to twenty-five feet long.

Int. 22. What, if anything, can persons in charge of vessels do to prevent their listing off when they ground, or to make them heel one way or the other when they ground?

(Objected to as immaterial, and also because witness has not been shown to be an expert.)

Ans. The way that I do, when I have charge of a vessel—which I have oftentimes had—I haul them into the wharf, put down my fenders, and list them against the wharf, by shifting chains, or something or other; list them in after my fenders are down.

Int. 23. If a captain had accidentally, or otherwise, got his vessel into the place where the "Bowdoin" was hauled in when you first saw her, was it a careful or careless management to lie there over a tide when he might have hauled her into a safe place?

(Objected to as incompetent and immaterial.)

Ans. It was careless for him to lie there at all, or anybody else; when he hauled in, he should have sounded the water, if he wasn't acquainted with the place. He hadn't ought to have laid there over a tide, because he ought not to have laid there at all; he ought to have hauled right out.

Int. 24. Are these berths at the wharf of Messrs. Oakman & Eldridge safe or unsafe for vessels?

175 (Objected to as incompetent and immaterial.)

Ans. The berths are safe with a vessel properly laid; perfectly safe berths, with vessels laid into them as they ought to be.

Int. 25. State whether or not the pile of coal impaired their safety, in your opinion.

(Objected to as incompetent.)

Ans. Not at all; there was no trouble from the coal to a vessel properly laid in the berth.

Int. 26. Did you ever look at the pile of coal after the "Bowdoin" hauled out; if you did, where were you at the time, and at what time of tide was it?

Ans. I did look at the pile of coal before the "Bowdoin" hauled in there and after she hauled out; it was low water both times; I was standing on the cap-sill of the wharf.

Int. 27. Do you know how far out toward the keel track for vessels in the upper or shoal berth the coal extended?

Ans. I did not take actual measurements; but it wan't out far enough to interfere with vessels lying at the wharf in the shoal-water berth.

Int. 28. Had or not the "Bowdoin" fenders out when you saw her on Monday?

Ans. There was no need of her having any fenders out, for she was listed off from the wharf, not touching it. (The question repeated.) I didn't see any fenders aboard her; didn't take notice of any; didn't see any.

Int. 29. Might or might not proper fenders have saved her from heeling off?

(Objected to as incompetent and immaterial.)

Ans. She wan't hauled into a position that any vessel ought to lie at the wharf. In the position she was lying in, fenders would have had no effect at all.

Int. 30. Is there or not a berth to discharge vessels at the end of the pier at which the "Bowdoin" hauled?

(Objected to as immaterial.)

Ans. There is.

Int. 31. How is that berth as to being safe or unsafe for vessels to lie in?

(Objected to as incompetent.)

176 Ans. It's a safe berth. I've had three or four vessels of mine lie there to discharge.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto:

Cross-int. 1. What kind of a manufacturer are you?

Ans. I am in cotton and iron.

Cross-int. 2. Was your wharf at Charlestown east or west of Oakman & Eldridge's wharfs?

Ans. East.

Cross-int. 3. How many vessels have you had unloaded at Oakman & Eldridge's wharfs?

Ans. I couldn't tell you; quite a number.

Cross-int. 4. About how many?

Ans. Somewheres ten or a dozen, more or less; I have had vessels from ninety tons to nine hundred tons unloaded there.

Cross-int. 5. During what years were they unloaded there?

Ans. The last one I had unloaded there was in 1862, I think, or 1863. No, it was 1864, and she lay in this same berth the "Bowdoin" lay; and I had a large ship loaded with salt lay at the outer end, in 1860 or 1861.

Cross-int. 6. How many vessels have you had unloaded in the berth where the "Bowdoin" was discharged?

Ans. I don't think, at present, but of three; I think of three that I have had there.

Cross-int. 7. These were all discharged prior to the coal running into the dock, in October, 1866, were they not?

Ans. Yes.

Cross-int. 8. (De bene.) Do you know how far below the jog in the wharf the descent in the bottom of the dock was?

Ans. Right at the jog it commences to descend into deep water; it runs off slanting; it runs off very quick at the jog of the wharf, where the pile and stone work come together.

Cross-int. 9. (De bene.) How far below the jog is the descent abrupt?

Ans. I answered that in the preceding.

Cross-int. 10. (De bene.) When the "Bowdoin" was hauled

177 ahead into the berth where she discharged, her stern lay aft of the jog, did it not?

Ans. No, sir.

Cross-int. 11. (De bene.) Was her stern forward of the jog?

Ans. I think that I went down and looked at her, and her stern was about even with the jog; her taffrail rail was about even with the jog,

as near as I remember; her keel would be a little above the jog, as the taffrail projects.

Cross-int. 12. (De bene.) Did you ever sound this descent between the upper and the lower berths?

Ans. No.

Cross-int. 13. (De bene.) On Monday, when you looked at the coal, some of it was under water, was it not?

Ans. A very little of the lower edge was under water; the tide had flowed some.

GEORGE W. WHITE.

Deposition of SABINE M. SMITH, a witness for respondents and appellants; taken before Charles F. Walcott, notary public, April 24, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. Sabine M. Smith, Somerville; I am a commercial insurance and real estate broker.

Int. 2. Are you or not acquainted with docks and wharfs and the unloading of vessels? If you are, state what opportunities you have had of becoming so acquainted.

Ans. I have been employed for six years on wharfs in Charlestown, as wharfinger, from 1859 to 1865.

Int. 3. Are you or not acquainted with the dock and wharfs
178 now occupied by Oakman & Eldridge; if so, how did you become acquainted with them?

Ans. I am; the eastern wharf, or rather the northeastern, now owned by Mr. Oakman, I took a lease of, about 1859, and was employed as wharfinger for myself and other parties, on that wharf and the one adjoining, for about six years—the one adjoining to the westward. The dates I am not positive of, to a month, but they are about as I give them.

Int. 4. Who were the other parties referred to in your last answer?

Ans. Mr. T. T. Sawyer and Edward Lawrence purchased the wharf first mentioned, and were the parties whom I acted for as wharfinger, while they owned the wharf, for about two years, more or less, until Mr. Oakman purchased it. Oakman & Eldridge were the firm that purchased the wharf, and I acted for them nearly two years after they purchased it. I officiated for them longer than that time, but not as wharfinger on that wharf. I after that went to a wharf in Boston, at the foot of Cambridge street, called Jail wharf, which was occupied by them.

Int. 5. When did you leave the employment of Oakham & Eldridge?

Ans. I think it was four years ago this month; three or four years, I am not certain which.

Int. 6. Had you anything to do about dredging the dock at Charlestown, now occupied by Oakman & Eldridge; if so, what; who did then dredging; what was done, and when was it done?

Ans. I had; Mr. Wooley did the dredging, under my direction; I think it was done in 1862; the dock was dredged out, so as to make two safe berths on the western side of the easterly wharf—one deep-water berth and one shoal-water berth.

Int. 7. What is there, if anything, in the wharf that marks the division between these two berths?

(Objected to as incompetent and immaterial.)

Ans. There is a jog in the wharf between the two berths; the lower berth being about a hundred and fifty feet in length, and the upper one about a hundred and twenty-five.

Int. 8. How near to the head of the dock does a vessel that requires the full length of the upper or shoal-water berth come, when in her place?

179 (Objected to as last.)

Ans. Her cutwater would be about twenty feet from the wall at the head of the dock. I would alter that to fifteen or twenty; a vessel could be hauled to within fifteen without damage to the vessel.

Int. 9. Where would her bowsprit and jib-boom then come, and what change, if any, would be necessary in her head-gear?

(Objected to as last.)

Ans. A vessel requiring the whole length of that berth, in grounding, would clear her bowsprit and head-gear from the wall at the head of the dock. Her bowsprit and jib-boom would lie over the wall—clear of it.

Int. 10. Supposing her to be a vessel that, when in her place, comes within twenty-five feet of the head of the dock, how about her head-gear then?

(Objected to as immaterial.)

Ans. It would be the same as before, for a vessel twenty-five to twenty feet from the head of the dock; by head-gear, I include the martingale; the martingale swings one way or the other, as occasion requires.

Int. 11. How much time and labor is required to swing the martingale one way or the other, as you have said?

(Objected to as incompetent and immaterial.)

Ans. It would vary in different vessels; some would take ten minutes, and some twenty-five, perhaps.

Int. 12. Is it a common or uncommon thing to do this?

(Objected to as last.)

Ans. It is a common thing to do it where it is necessary.

Int. 13. Where, in relation to the jog in the wharf, does the descent from the shoal-water berth to the deep-water berth commence?

Ans. Perhaps ten feet—from five to ten feet below the jog.

Int. 14. How did these berths prove, as to being safe or unsafe for vessels, after the dredging?

(Objected to as incompetent and immaterial.)

Ans. I never had a vessel damaged, while I was wharfinger; perfectly safe.

Int. 15. Would it be, in your opinion, negligent or careful sea-

180 manship to lay a vessel loaded with coal, with her stern twenty-five feet below that jog, and let her ground there?

(Objected to as incompetent, the witness not having been shown to be an expert.)

Ans. It would be negligent.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) At the time the lower berth was dredged out, it was done in such a manner that there was an abrupt descent between the upper and the lower berth, was it not?

Ans. There was a different descent between the upper and lower berth, from the upper or lower berth, a different grade of descent; what dif-

ference there was between the two berths, if any, was of a different descent from the two berths.

Cross-int. 2. (De bene.) Was the upper berth, on the westerly side of the easterly wharf, dredged out at the same time as the lower one?

Ans. It was, or the same week; as soon as one was done, the other was finished.

Cross-int. 3. (De bene.) The two berths were not dredged, with their bottom on a gradually sloping line from the head of the upper berth to the foot of the lower berth, were they?

Ans. They were not.

Cross-int. 4. (De bene.) There was an abrupt descent between the foot of the upper berth and the head of the lower berth, at the time it was dredged out, was there not?

Ans. After the two berths were finished, the part between the two berths was graded off, so as not to be so abrupt as it would have been without grading.

Cross-int. 5. (De bene.) What space was there between the upper end of the lower berth, and the lower end of the upper berth?

Ans. There might be ten or fifteen feet from the jog down, or from just below the jog down on the lower berth.

Cross-int. 6. (De bene.) Do you mean that there was a space of ten or fifteen feet not dredged out at all, between the two berths?

Ans. Not dredged, anything more than to take off the abrupt-
181 ness between the two berths; not dredged with the intention of making it for a vessel to lie there.

Cross-int. 7. (De bene.) Do you know the difference of level between the upper end of the lower berth and the lower end of the upper berth, at the time it was dredged?

Ans. I do not. I could not state it, exactly.

Cross-int. 8. (De bene.) Can you state about what it was? If so, state it.

Ans. It is so long since it was done, that the particulars have gone from my memory somewhat.

Cross-int. 9. (De bene.) Do you know the distance from the jog in the wharf to the wall at the head of the dock?

Ans. About a hundred and twenty-five feet.

Cross-int. 10. (De bene.) Does the berth extend to the head of the dock; and if not, how much short of it is it?

Ans. As near as a common-sized vessel would go; perhaps within fifteen feet; it was dredged, perhaps, within ten or fifteen feet of the wall.

Cross-int. 11. (De bene.) Do you remember, accurately, the distance from the wall that the dredging commenced?

Ans. The dredging left off the width of one of Mr. Woolley's scows, which had to lay ahead of the dredging machine; that might have been fifteen feet wide.

Cross-int. 12. (De bene.) Are you sure that this scow lay against the wall at the head of the dock?

Ans. Yes, sir.

Cross-int. 13. (De bene.) If the dredging machine lay against the scow, how near the scow could it dredge?

Ans. The shovel would come up against the side of the scow, just the width of the scow. I mean the dredging would be up to the side of the scow, or very near it.

Cross-int. 14. (De bene.) When you were wharfinger at Oakman & Eldridge's wharfs, you were present, or had some one present, when a vessel was hauled in, to direct where she should lie, were you not?

Ans. Not in all cases. A vessel hauls in, very often, without any instructions; sometimes a vessel would be instructed where to haul, and I would not be present when she hauled in.

Cross-int. 15. (De bene.) If you know when a vessel was to
182 haul in, were you not present yourself, or did you not have some one present, when she was hauled in, to direct where she should lie?

Ans. I shouldn't know when a vessel was to be hauled in unless some person gave me the information, and to that person I should give directions where the vessel was to haul when she did come; and after giving such directions I should not consider it necessary to be present or have any one be present.

Cross-int. 16. (De bene.) Did you not, while at Oakman & Eldridge's wharf, direct when a vessel should haul in?

(Objected to as immaterial and irrelevant.)

Ans. Usually; when they were not already in.

Cross-int. 17. (De bene.) Was it not for you to say when they should come in, and where they should lie?

Ans. It was.

Cross-int. 18. (De bene.) Then if you give directions to a vessel to haul into a certain place, and at a certain time, were you not usually present yourself, or did you not usually have some one present when she did come in?

Ans. I did not. I did not consider it my duty, or necessary to be there, if I had given directions.

Cross-int. 19. (De bene.) Was it your practice to be absent when a vessel hauled in?

Ans. Quite often, if employed in other business.

Cross-int. 20. (De bene.) What other business?

Ans. Superintending discharging another vessel, weighing coal, and so forth; sometimes we had three or four vessels unloading there at once.

Cross-int. 21. (De bene.) Did you not usually, after a vessel had hauled in, look at her before she grounded, to see whether she was in her right place?

(Objected to as immaterial and irrelevant.)

Ans. Usually.

Cross-int. 22. (De bene.) Do you remember how the westerly side of the easterly wharf is constructed?

Ans. Piles were driven the whole length. Down to the jog and a little below the jog, it is solid stone wall with piles outside. The wharf below that is of piles.

183 Cross-int. 23. Is this stone wall perpendicular, or does it slant in from the bottom to the top?

Ans. It slants in a very little at the top; a gradual slant all the way up from the bottom to the top.

Cross-int. 24. How much does it slant from a perpendicular line from the bottom to the top?

Ans. From one to two feet, not to state it positively.

(The witness, at this point, stated that he desired to add to his answer to the question if he did not look at vessels before they grounded, after being hauled in, and said:) If employed elsewhere, I did not consider it necessary, after having given directions where to haul the vessel.

Cross-int. 25. I don't ask you what you would or would not consider necessary; I ask you as a matter of fact whether you did not usually,

while at Oakman & Eldridge's wharf, look at vessels before they grounded, to see whether or not they lay right?

(Objected to as immaterial and irrelevant.)

Ans. Usually; I should give the same answer to that.

Additional interrogatories by Mr. Dodge, in behalf of respondents and appellants, and answers of the witness thereto.

Int. 16. When you were at Oakman & Eldridge's wharf, was the wharf kept open for business on Sunday?

(Objected to as incompetent and immaterial.)

Ans. It was not.

Int 17. (De bene.) If you knew a vessel was to be hauled in on Sunday, and had given directions as to the place where she was to haul, were you or not accustomed to go to the wharf to see whether she lay right?

(Objected to as last.)

Ans. I was not.

Int. 18. Do you consider it the duty of the wharfinger, or of the master of a vessel, to see that a vessel grounds properly, with the proper list to or from the wharf, and has proper fenders in?

(Objected to as incompetent and immaterial.)

Ans. The duty of the master, in all cases, to see that his vessel is properly secured, and fenders placed, if any are necessary, between the vessel and the wharf, so that she will ground in a proper manner.

184 Cross-interrogatories by Mr. Lathrop, in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 26. (De bene.) What is the object of fenders in a vessel lying at a wharf?

Ans. To give the vessel her proper bearings against the wharf and grounding, so that her list can be altered, if necessary, by knocking those out and putting in smaller or larger, if necessary, to correct her list.

Cross-int. 27. (De bene.) Is that the only use of fenders?

Ans. It is not. In case a vessel is afloat, the fenders are to keep her from the wharf, from chafing, and from injuring the wharf.

Cross-int. 28. (De bene.) Is it necessary for vessels, at all kinds of wharfs, to have fenders?

Ans. I should think not actually necessary.

Cross-int. 29. (De bene.) At what kinds of wharfs are they not actually necessary?

Ans. Any wharf where a vessel's rail wouldn't come up so high as the cap of the wharf at high water—the wharf made of piles—I shouldn't consider it necessary, the vessel being afloat at all times of tide.

Cross-int. 30. (De bene.) In such a case as you have mentioned, the piles act as fenders, and the only danger is in the rail catching on the capsill, is it not?

Ans. The rail and anchor, if the anchor is on the bow.

Cross-int. 31. (De bene.) If a wharf is built in such a way that the only use in fenders is to enable a vessel to take her proper berth, in grounding, is it not customary for the person in charge of the wharf to see that the vessel has fenders of the proper size and properly placed?

(Objected to as irrelevant and immaterial.)

Ans. It is usual for the wharfinger to tell the captain how far from the wharf to lay his vessel, but not his duty to see that he has fenders, or to see that he puts them in.

Cross-int. 32. (De bene.) While at Oakman & Eldridge's, did you ever order a vessel to haul in on Sunday, so as to be ready to unload on Monday morning?

(Objected to as last.)

185 Ans. I think I have, [with the understanding that, if the captain was in a hurry to discharge, he could haul in on Sunday, if he chose to, and it would forward him one day by so doing.]

(Answer objected to, as far as in brackets, as irresponsive and immaterial.)

Cross-int. 33. (De bene.) How many vessels were hauled in on Sunday, while you were at Oakman & Eldridge's?

Ans. I couldn't say. There might have been five, ten, or forty.

Cross-int. 34. You are a neighbor and friend of Mr. Oakman, the respondent in this case, are you not?

Ans. We both live in Somerville; there is quite a distance between us; I am not a particular friend; I am on friendly relations with him—nothing further than that.

Cross-int. 35. How often have you talked over the matter of the accident to the "Bowdoin" with Mr. Oakman?

Ans. Twice before to-day, I think.

J. M. SMITH.

Deposition of WILLIAM WOOLLEY, a witness for the respondents, taken before John W. Hudson, notary public, April 25, 1868.

Direct interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 1. State your name, residence, and business; state, also, how long, and how extensively, and where you have carried on your business.

Ans. William Woolley, of East Boston; my business is dock dredging with a steam dredging machine; I have been in the business for fifteen years, and have done ninety-nine one-hundredths of all the work of this kind done in Boston and the adjacent cities during that time.

Int. 2. State whether or not you dredged the dock at Charlestown now in the use and occupation of Messrs. Oakman & Eldridge.

Ans. I did.

Int. 3. When?

186 Ans. That is a question I couldn't answer; I could tell by referring to my books; I think, though, it was some time in 1864; either in 1864 or 1865.

Int. 4. State whether you dredged both sides of the dock at the same time or during the same year.

Ans. We did not dredge them both at the same time. I think the other side of the dock was dredged the previous year. By referring to my book, I could tell the precise time of either one.

Int. 5. Which side of the dock, the eastern or western side, was dredged last?

Ans. The side next the navy yard was the side dredged last.

Int. 6. State how many berths for vessels to lie in there were on the eastern side of the dock, that is, on the side adjoining the easterly wharf as you dredged it.

Ans. Two.

Int. 7. How did they differ from each other, and for what was each designed?

Ans. I should class one as a deep-water berth, and one as a shoal-water berth.

Int. 8. State what the form of the wharf is at the place where the lower or deep-water berth ends, and the upper or shoal-water berth begins.

(Objected to as immaterial.)

Ans. Well, where the deep-water berth ends and where the shoal-water berth commences, there is a jog in the wharf of about five feet.

Int. 9. Are these jogs common or uncommon in wharves in this vicinity?

Ans. Quite common, especially in Charlestown.

Int. 10. What, if anything, do they indicate?

(Objected to for form and substance.)

Ans. They indicate to me that there are two berths. [If I were ordered to go to the wharf and dredge the upper berth, I should commence at that jog.]

(Part in brackets objected to as not responsive, incompetent, and immaterial, by Mr. Lathrop.)

Int. 11. What, if anything, do they indicate as to the relative depth of water in these two berths?

187 (Objected to as incompetent and immaterial.)

Ans. They indicate that one was deep water and the other shoal, or that there was a difference in the water.

Int. 12. State whether or not you know of any case of a wharf with two berths on a regular incline from the upper end of the upper berth to the lower end of the lower berth, where there is a jog between them.

Ans. I do not.

Int. 13. How were these berths, as left by you after dredging, as to being safe or unsafe for vessels to lie in?

Ans. Perfectly safe.

Int. 14. Whether or not, in the fall of 1866, you saw a vessel that received injury in that dock, lying in the dock?

Ans. I suppose that I saw the same vessel. I saw a vessel lying there.

Int. 15. How was she lying when you saw her? Describe fully.

(Objected to as incompetent.)

Ans. She was lying with her bow close to the wharf, about half the distance from the jog to the head of the wharf. Her stern, I should think, was twenty to twenty-five feet from the wharf. To the best of my judgment, she was lying in a very bad position, where no vessel ought to be. [I shouldn't suppose any man who had charge of a vessel would ever leave her in such a position.]

(Part in brackets objected to as not responsive, and as immaterial and incompetent, by Mr. Lathrop.)

Int. 16. Why a bad position? State fully.

Ans. She was lying partly in a shoal-water berth and partly in a deep-water berth, and she was lying directly across a bank which is necessarily thrown up between berths, where vessels lay.

Int. 17. What throws up this bank?

Ans. Vessels throw it up. Their bilge resting on the bank, throws it out from under them.

Int. 18. How was the vessel you saw as to heeling over? If she was heeled over, which way?

Ans. She wasn't really heeled a great deal either way. She was rather twisted, so that one mast stood in one position and the other mast in another. If anything, she was heeled toward the wharf.

188 I passed by very quickly; didn't stop to examine. I was on a tug-boat at the time.

Int. 19. How far off were you?

Ans. From one hundred and twenty-five to one hundred and fifty feet.

Int. 20. In the position in which that vessel was then lying, what would, in your judgment, cause the twist you noticed?

(Objected to as immaterial and as incompetent, witness not being qualified as an expert.)

Ans. By lying out of her berth—the berth.

Int. 21. Please explain how this would twist her.

(Objected to as immaterial and as incompetent, witness not being qualified as an expert.)

Ans. It would naturally twist any vessel laying across a bank with thirteen feet of water under her stern at low water, and her bow hard up against a wharf.

Int. 22. State whether or not, when you saw this vessel, the position in which she was lying attracted your attention.

Ans. It did.

Int. 23. Whether or not it was then remarked upon by you, or others in your hearing?

(Objected to as incompetent and immaterial.)

Ans. I made a remark about it—to no particular person—to several who stood near me.

Int. 24. How near to the head of the dock did you dredge the shoal-water berth?

Ans. Twelve feet.

Cross-interrogatories by Mr. Lathrop, and answers of the witness thereto.

Cross-int. 1. Have you made an examination of the bottom of the dock next to the easterly wharf since the time you dredged it?

Ans. I have.

Cross-int. 2. When and what examination did you make?

Ans. I couldn't state the precise time when. I think it was in the spring of 1867. It was after this vessel laid there. I examined it by sounding with a pole expressly for the purpose.

Cross-int. 3. From where to where did you sound?

189 Ans. I sounded from the head of the dock to the foot of the lower berth, through both berths.

Cross-int. 4. At whose request did you so sound?

Ans. I couldn't state certain whether it was Mr. Oakman's or Mr. Eldridge's; no particular request. They said if I was in the vicinity they would like to have me examine it.

Cross-int. 5. At what time of tide did you make the examination above mentioned?

Ans. About two-thirds tide, if I recollect right.

Cross-int. 6. Did you sound from a boat, or how?

Ans. From a boat.

Cross-int. 7. (De bene.) How far below the jog did you commence to dredge the lower berth at the easterly wharf?

Ans. Calculated to be even with the jog. Calculated to leave off the lower berth with the jog, and commence on the upper berth at the jog. We commenced to dredge at the lower end of the dock.

Cross-int. 8. Did you, in fact, dredge the lower berth up to the jog?

Ans. Yes.

Cross-int. 9. (De bene.) What difference is there between the depth of water at the lower end of the upper berth and the upper end of the lower berth?

Ans. At the time it was dredged, about three feet and a half between the head of one vessel and the stern of the other, in the dock at the same time. I don't mean to convey the idea that there was an abrupt descent between the stern of one vessel and the bow of the other, but three feet and a half difference of depth between the bow of one and the stern of the other, both lying at the wharf. There was a gradual incline between the head of the dock and the lower end of it.

Cross-int. 10. (De bene.) How many berths are there on the easterly side of the westerly wharf?

Ans. Two.

Cross-int. 11. When you dredged the bottom of the dock on the easterly side of the westerly wharf, you dredged it on a gradual decline from the head of the dock to the lower end of it, did you not?

Ans. Yes. (The question being repeated, the witness continued:) This easterly side of the westerly dock is not dredged in that
190 way. There is a more abrupt descent between the upper and lower berth than on the other side of the dock.

Cross-int. 12. How many docks have you dredged out since you last dredged out Oakman & Eldridge's dock?

Ans. I couldn't state the precise number; probably some fifty to one hundred.

Cross-int. 13. How far out in the stream were you in the tug when you passed and saw a vessel lying in a bad position, at Oakman & Eldridge's dock, as you have stated?

Ans. I should judge that we passed within the extent of forty feet from the end of the wharf—not more than that—within thirty or forty feet. We passed close by the end of the wharf.

Cross-int. 14. At what time of day was it?

Ans. I couldn't state now what time of day it was. By referring to my books, I think I could tell within an hour or two.

Cross-int. 15. (De bene.) What part of the bow of the vessel was lying against the wharf?

Ans. Just abaft the cathead, as near as I could judge, passing by quick. She appeared to be touching the wharf, lying hard against it.

Cross-int. 16. (De bene.) If the vessel was lying in this position, would not this bring the bowsprit of the vessel over the cap-sill of the wharf at which she was lying?

Ans. It would fetch her jib-boom over. At the angle at which she was lying, I shouldn't suppose it would fetch her bowsprit over. It might, possibly, the end of it.

Cross-int. 17. (De bene.) How far from the cutwater should you say it was to the place where the bow of the vessel touched the wharf?

Ans. Well, I couldn't pass any judgment on that. Some vessels have the cutwater twice as long as others.

Cross-int. 18. (De bene.) How long is the cutwater usually in vessels of the size of the one that you saw in Oakman & Eldridge's dock?

Ans. Well, in my judgment, five to seven feet.

Cross-int. 19. Explain what you mean by cutwater.

Ans. What I understand is a projection from the stem of the vessel, generally a model or some ornament on it.

Cross-int. 20. (De bene.) How far from the stem of the vessel was it to the place where the vessel first touched the wharf?

191 Ans. I couldn't pass any judgment.

Cross-int. 21. (De bene.) How far abaft the cathead was it to the place where the vessel first touched the wharf?

Ans. I wasn't in position to judge how far.

Cross-int. 22. Have you any distinct recollection how far towards the head of the dock by the easterly wharf you dredged the upper berth; or do you merely infer that the distance was what you have stated?

Ans. I have a distinct recollection that I dredged the upper berth within twelve feet of the wall at the head of the dock. I measured, and made calculation how far we could dredge, and marked it on the wharf for the wharfinger. We dredged as far as we could, so that a vessel could lay within twelve feet of the wall at the head of the dock.

Cross-int. 23. In dredging a dock by a wharf where there is room for more than one vessel to lie, do you not frequently dredge the bottom on a gradual slope from the head of the dock to the foot of it?

Ans. We do.

Cross-int. 24. (De bene.) When a wharf has a jog in it, do you not frequently dredge the dock on a gradual slope from the head of the dock to the foot of it?

Ans. I never did.

Cross-int. 25 (De bene.) Is there any reason why this is not done?

Ans. Yes, sir. The reason would be, that a vessel is calculated to lay alongside a wharf, and would not lay in the same bed. She would lay out of her berth.

Cross-int. 26. (De bene.) Have you not known of wharves, with jogs in them, where the bottom is dredged on a gradual slope?

Ans. Not any where vessels would ground at low water.

Cross-int. 27. (De bene.) How many wharves can you mention, with jogs in them, where you know the bottom is not a gradual descent, but where there is a descent more or less abrupt between the upper and lower berths, where they come together.

Ans. I can mention some in that vicinity. I might sit here half a day and keep thinking of them. There is Tudor's wharf, Hittinger's wharf, Damon's wharf, Caswell's wharf, (this one) in Charlestown, Gray's wharf, Boston; Battery wharf, Commercial wharf, T
192 wharf, India wharf, Rowe's wharf, Boston wharf, I believe at South Boston; Clark's wharf, at East Boston. That's all I think of just now.

Cross-int. 28. (De bene.) Do you mean to swear that at all these wharves you have just mentioned, there is a marked descent more or less abrupt at the jog between the two berths, one of which begins and the other of which ends at said jog?

Ans. I wouldn't swear so. To the best of my knowledge it is so.

Cross-int. 29. State which of the wharves you have mentioned you have dredged out immediately above and below the jog in said wharf.

Ans. All of them. I don't pretend to know about any wharf where I haven't dredged.

Cross-int. 30. (De bene.) State what the difference of level is between the two berths immediately above and below the jog in each of the wharves you have mentioned. I mean, between the lower end of the berth above the jog, and the upper end of the berth below the jog.

Ans. I don't know as I could state precisely. I will state as near as I can, to the best of my knowledge. In Tudor's wharf, there are two berths, and a difference of eighteen feet between the level of the lower end of the upper berth and the upper end of the lower berth. At Hittenger's wharf, this difference is fifteen feet; at Damon's wharf, it is six feet; at Caswell's, (this one,) about three and one-half feet; at Gray's

(Boston,) ten feet; at Battery wharf, about seven feet; at Commercial wharf, twelve feet; T wharf, four feet; at India wharf, three feet; at Rowe's wharf, about five feet; at Boston wharf, about five feet; and at Clark's wharf, about five feet. I didn't put in Fiske's wharf, I believe. At this wharf the difference is about eleven feet.

Cross-int. 31. (De bene.) Do you mean to swear that in all the wharves mentioned, the depth of descent you have mentioned occurs just at the jog in each wharf?

Ans. To the best of my knowledge and belief, in the immediate vicinity of the jog. I don't say within one foot, or six inches, above or below the jog.

Cross-int. 32. Within how many feet of the jog are you willing to swear the descent is?

Ans. Within ten feet above or below, at the time it was dredged.

At half past one p. m., recess of one hour; at half past two, examination continued, as follows:

193 Cross-int. 33. (De bene.) State the year you dredged each of the docks you have mentioned as having jogs in them.

Ans. I couldn't state definitely now. By referring to the books, I could state each dock.

Cross-int. 34. (De bene.) State as near as you can?

Ans. Tudor's wharf, 1864; one dock, and the other dock, 1866, I believe; Hittinger's wharf, 1866; Damon's wharf, 1863 and '4, to the best of my recollection; Gray's (Boston,) 1866; Battery wharf, 1866; Commercial wharf, 1865 or 1866, I couldn't say which—couldn't say the year we dredged that particular berth; T wharf, 1861; India wharf, 1858 or 1859; Rowe's wharf, 1858 or 1859—I couldn't say which year; Boston wharf, 1866, to the best of my recollection; Clark's wharf, 1867; and Fiske's wharf, 1866.

Re-direct interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 25. When you examined and sounded these berths at the easterly side of Oakman & Eldridge's dock in the spring of 1867, as you have said, state how you then found them as to being safe or unsafe for vessels to lie in?

(Objected to as immaterial.)

Ans. I found them perfectly safe for a vessel to lie in the upper or lower berth.

Int. 26. In your answer to the ninth cross-interrogatory, you say, "there was a gradual incline between the head of the dock and the lower end of it;" please explain more fully what you mean by this.

Ans. My meaning is, that there were no abrupt places in there; there was a gradual decline, as I have said. A vessel's stern in the upper berth would not touch a vessel's bow in the lower berth.

Int. 27. In answer to some of the cross-questions, you have included this among others, in which there is a more or less abrupt descent from the lower end of the upper berth to the upper end of the lower berth, opposite or near to a jog in the wharf, have you not?

Ans. I have, within a certain space, above and below.

Int. 28. Now please state what you mean by this, when you at the same time say there is a "gradual incline" from the upper end of one berth to the lower end of the other.

194 Ans. You are speaking of the side where the vessel lay? It

is very clear to my mind how it can be. I believe I stated that, including a space of ten feet above and ten feet below the jog, there was a difference in depth of about three and a half feet, to the best of my knowledge; and that from the head to the foot of the dock there was a gradual incline.

Int. 29. Will you please draw a line on a sheet of paper, showing the grade of the bottom of the dock on the easterly side? Let it include the two berths and the space between them. (Witness prepares "Exhibit A, J. W. H," and answers—)

Ans. I don't know how it is now. I will show you how it was when I dredged it. In this diagram which I draw, (marked Exhibit A, J. W. H,) "A" represents the jog in the wharf, "B" a point on the bottom of the dock ten feet above the jog, and "C" a point on the bottom ten feet below the jog; and the line from "D" to "E" shows the descent from the head to the foot of the dock. There is three and a half feet difference between the depth at "B" and the depth at "C."

Int. 30. Will you put the marks for the letters "B" and "C" precisely where you intend to have them on the plan?

Ans. I have done so. My marks are at "B′" and "C′." It is difficult to tell where those are. That isn't drawn to any scale.

Int. 31. Will you try to remember whether or not any part of the more rapid descent, shown on your plan between "B′" and "C′" came above the jog when you dredged it?

(Objected to as leading.)

Ans. Before we dredged it, there was a more abrupt descent there than there was after we dredged it. The idea I mean to convey is, that the berth was not a safe berth; and we went there and dredged it to make a safe berth of it—referring to the upper berth.

Int. 32. You have shown on your plan a descent from one berth to the other. What I wish now to ask is, do you remember whether or not any part of this descent came above the jog, as you left it at the end of the dredging?

(Objected to for form.)

Ans. It came below the jog, as I recollect it, most of it.

195 Re-cross interrogatory by Mr. Lathrop, and answer of the witness thereto.

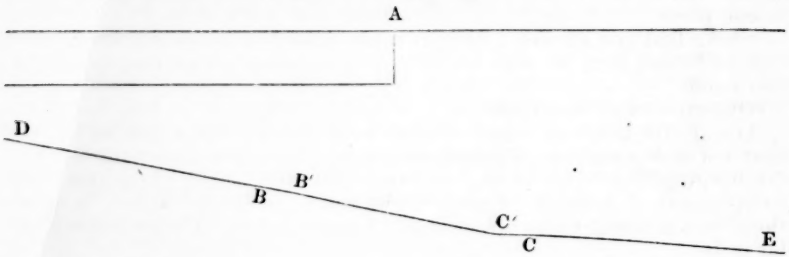
Cross-int. 35. (De bene.) In your answer to the thirtieth cross-interrogatory, you mention several wharves as having a difference of level between the berth above and below the jog. Do you mean that the descent is abrupt, or that there is the difference you have mentioned in said berths, between a point ten feet above the jog, and ten feet below the jog in said berth?

(Objected to as assuming what has not been said.)

Ans. A difference of eighteen feet between a point ten feet above and ten feet below, I should call abrupt; but a difference of three and a half feet I shouldn't call abrupt. I have stated them according to the best of my knowledge and ability.

WILLIAM WOOLLEY.

EXHIBIT A—J. W. H.



This is the diagram drawn by the witness in giving his answers to the twenty-ninth and thirtieth interrogatories by Mr. Dodge.

JOHN W. HUDSON,
Notary Public.

196 Deposition of SAMUEL OAKMAN, one of the respondents, taken before John W. Hudson, notary public, April 27, 1868.

Direct interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. Samuel Oakman, of Somerville; I am a wharfinger and coal merchant.

Int. 2. Where is your place of business, and how long have you carried on business at that place?

Ans. Charlestown; at Caswell's wharves; I have carried on the business between twenty and twenty-one years at those wharves.

Int. 3. Are you one of the respondents in this case?

Ans. I am.

Int. 4. How long have you carried on business without interruption at Caswell's wharves; and for how much of the time have you occupied the easterly wharf?

Ans. We commenced business on the easterly wharf, and had it uninterrupted for eight years. During that time, we had hired the adjoining wharf—the westerly wharf, as we call it. Then after a vacation of four or five years, we again had the easterly; bought it. We bought it in 1863 or 1864, I couldn't say which.

Int. 5. Did the schooner "Bowdoin" come to Charlestown with a cargo of coal consigned to you, in October, 1866?

Ans. She did; perhaps I might qualify that. It was to be landed at our wharves.

Int. 6. By whom, and when, and where was her arrival first reported to you? What was said, and what did you reply?

Ans. She reported to me on Tuesday, in the forenoon, by the captain, at my counting-room on the wharf. I told the captain that he was unfortunate in being the last of the fleet; that there would be consequent delay. I told him it was part of a lot of 1,500 tons that was all to be landed at one place, and he would have to wait for the other vessel to discharge. I told him that when he hauled in, he would
197 take the same berth that the brig—the "S. B. Smith," I think it was—was then discharging in; that we should hurry on as fast as we could, and delay him as little as possible. He made the custom-

ary complaints—regrets at having to lay so long. I said it couldn't be avoided in this case; we had made preparations to discharge it all in one place.

Int. 7. Did you or not tell him what vessel or vessels were to discharge before him at that berth? If yes, what vessel or vessels did you name?

(Objected to as immaterial.)

Ans. I did tell him what vessels were ahead. I wanted him to see that I wasn't unnecessarily detaining him. I named this "Smith," then discharging, the "Daybreak," and the "Haskell." His vessel made the complement, I believe. There might have been one more. I think there was a vessel came afterwards; I am not sure. That was the regular order.

Int. 8. How near to the "S. B. Smith," as she then laid, was your counting-room?

Ans. I should think about three hundred and fifty feet.

Int. 9. Do you know where the "Bowdoin" was at that time?

Ans. She had just come up, and was lying at the end outside of the vessels—at the eastern pier, I think. She wasn't made fast then; she was just hanging on alongside.

Int. 10. How near the "S. B. Smith" would the captain of the "Bowdoin" pass in coming to your counting-room, or returning from it to his vessel?

Ans. Well, within sixty feet. If he went down the eastern pier, he would within thirty feet. I don't know which pier he went down.

Int. 11. Supposing he went down the wharf to the head of the dock, and then crossed the head of the dock to the western pier.

Ans. He would pass right under the jib-boom of the "S. B. Smith."

Int. 12. When after this did you next hear from the "Bowdoin;" and by whom; and what then took place?

Ans. I have no recollection of anything till Friday forenoon of that same week. Then a man came to the office to complain of usage. Another vessel had got ahead of him. I asked him if he was the mastes of her. He said, "No, the captain had gone away and left him in charge." He didn't want any other vessel to get his chance. I
198 assured him that there was no vessel going to take his place at all; that he was going to take the berth that the "Daybreak" was then in; that that was just as I had assured him at first; I hadn't changed my plan. I said to him then, that the "Daybreak" would be out the next morning, and I wished him to get his vessel into her place as quick as the "Daybreak" was out. I told him the tide would serve right, as the "Daybreak" would go out about ten o'clock in the morning, and he would get in at high water. I said to him, "You go down and see just where she lays, as we are going to use the same stage, and the same engine, and everything precisely as it is working there." I should like to give some reasons why I was so explicit. (Mr. Lathrop objected to the reasons as incompetent and immaterial.) I gave the mate my reasons why I wished him to occupy the same position. The engines that we were using for discharging these cargoes was on the opposite wharf, across the dock; and the fall wouldn't lead to this engine right unless he got right to that point. We would have to rig other leaders—other leading blocks—or something of that sort.

Int. 13. What, if anything, did you say to the mate at this time, in relation to the place where the main hatch of the "Bowdoin" was to come?

(Objected to, for form and substance, witness having already stated what the conversation was.)

Ans. I told him he was to bring it so as to use that rigging precisely as it was being used on the "Daybreak." What I mean by rigging is the stage, engine, and fall.

Int. 14. When did you personally next see or hear from the "Bowdoin?"

Ans. I heard from them Saturday afternoon, but not from her officers. I heard from my own people. The next I knew personally was Monday morning, I should think about half past eight o'clock. It was when I first came to the wharf. I went down to the vessel and found the captain very much excited. I asked him what he had left his vessel in that place for. "Why didn't you haul her up where you was told?" He replied, "he wasn't going to dismantle his vessel." He said a coal vessel never ought to lay aground. He said he was going to call a survey to show that it wasn't a proper place to lay a vessel. He said she was a new vessel, and if I wanted to
199 pay her cost it was all right. I told him he was very foolish. Said I, "If you had placed your vessel where you was told, you would have been perfectly safe." I told him I was very sorry for him, and I was willing and would do what I could to ease him as he then lay. The mate was about there. I asked how he came to leave her there. His reply was, that he told the captain as he was told, but that the captain would have his own way about it. I said to the captain that I was surprised he should lay there two tides in that position. His reply was something like this, that he thought she laid well enough the night before. I called the captain's attention to the way she was laying in the dock. She wasn't against the wharf. She was laying in no berth whatever.

(The remarks made by the witness, and the conversation between him and the mate, objected to as incompetent and immaterial by Mr. Lathrop.)

Int. 15. What reply, if any, did the captain of the "Bowdoin" make when you told him his vessel would have been safe if he had put her where he was told to?

(Objected to, witness having already stated the conversation.)

Ans. He said he should have had to come up with his head-gear, and he didn't propose to dismantle his vessel.

Int. 16. Did he or not, at any time during that conversation, say anything about his having put her where his mate told him; if so, what?

Ans. He didn't claim that he had put her there. He never said to me that he had put her where his mate ordered her.

Int. 17. State whether, during that conversation, he said anything about having put her where your wharfinger, Colman, had ordered him to put her. If so, what?

(Objected to as incompetent and immaterial.)

Ans. He said nothing about it. His complaint seemed to be, that if he had gone ahead he would have had to slack up forward. "That wasn't customary," he said.

Int. 18. What slacking up forward was necessary, if any, to enable him to come to his place?

(Objected to as immaterial.)

Ans. To come up on one side with the laniards of the martingale. To slack up these laniards on one side, and hoist the martingale up out of the way.

200 Int. 19. How much work is this; how long does it take; and is it common or uncommon to do it?

(Objected to as immaterial and incompetent.)

Ans. The work of slacking up, coming up, is very little; it would take perhaps fifteen minutes. It is a good deal more work to set it up. It is quite customary to do this.

Int. 20. Had you a spar fender in the dock? If so, for what purpose was it there?

(Objected to as immaterial.)

Ans. We had one there. It was for the use of the captains, if they desired it.

Int. 21. Was it used by the "Bowdoin?"

(Objected to as immaterial.)

Ans. It was used by her after she hauled ahead to the berth.

Int. 22. Was it in use by her on Monday morning when you first saw her?

(Objected to as immaterial.)

Ans. It was not.

Int. 23. What, if anything, was said by the captain of the "Bowdoin" to you in relation to fenders?

(Objected to as immaterial.)

Ans. He said, in reply to a remark of mine, that he ought to have got alongside the wharf and got in some fenders; that he didn't think it was necessary.

Int. 24. Now describe how the "Bowdoin" was lying on Monday morning when you first saw her?

Ans. When I first saw her, Monday morning, she was lying slightly listed off from the wharf, with her bow pretty close to the wharf, and her stern swung away from the wharf. Her bow was on the inside of the bed; her 'midships—her main rigging right abaft the 'midships—were right across the bank between the two wharves, lying across this mud bank thrown up between the two berths; her stern overhanging deep water, partially supported.

Int. 25. Was she injured; and if so, what injuries had she suffered, so far as you saw?

Ans. She was injured. It consisted in the throwing up of the
201 rail and water-ways where she was laying, and the wales also. Being listed, her stern was listed more than her bows—twisted.

Int. 26. Now state what, in your opinion, had caused her injuries; describe how they were caused.

(Objected to as incompetent, witness not being an expert.)

Ans. The cause of her injuries was her not being in the berth. In the first place, the bow being so near the wharf, and the fender posts of the wharf standing on an inclination of about two feet in ten feet, when her fore foot took the ground forward; the fender post, being firm, couldn't of course be moved. This would throw the vessel over. It would take a very little thing, when a vessel is on a poise, to incline it one way or the other. That would cause the list. But the main injury consisted in laying across this mud bank, which would bring a very heavy strain on that point, as all beyond that was overhanging. I don't think there was any support to the vessel for the last twenty-five feet; it was all hanging.

Int. 27. Describe how a loaded vessel is supported when aground in a berth where other vessels have laid before her.

(Objected to as immaterial and incompetent.)

Ans. She would be supported generally all under her bilges; that isn't material so her keel has a good support up and down, provided she is perpendicular, or nearly so, slightly inclined to the wharf. I would

say with reference to that dock, or any dock that has been used any length of time, that there is a regular bed formed, corresponding to the bottom of a vessel. It would be impossible for a vessel laying in a berth to lay badly in the bed; it just fits the bottom of a vessel.

Int. 28. Had some coal run off the wharf there; if so, how long before the "Bowdoin" came in, and how much was there of it?

Ans. There had, on the Monday night preceding. I have no means of saying precisely what there was; there was from three to five tons; I should say five tons was a large estimate.

Int. 29. Can you state whether or not the "Bowdoin" ever laid on this coal?

Ans. I don't think she ever touched it. I should like to say that, on that Monday morning when I went down at first, she was lying listed from the wharf, I standing on the wall at the head of the dock. It being about low water, I could see right underneath the vessel, right
202 under her bilge, and she was not touching the coal then. I was there some little time, about there for two hours, probably.

Int. 30. What was done with the vessel that Monday?

Ans. We took coal from the aftermost hatch, desiring to take as much strain as possible from the stern, and wheeled it up forward on deck; a labor of love, that was; we were not paid for it. There was other work had been done there by our folks that morning; tackles had been got out, heavy purchases from the mainmast-head to a storehouse of ours opposite, and a heavy strain taken upon them to ease the stern of the vessel as much as possible—hold her. There had been an attempt to rig a stage, to see if they couldn't get one long enough to take out some coal there. That was abandoned; they couldn't make it work. The moving of this coal continued unti lshe floated, and then she was hauled ahead, and her stern was hauled in square with the wharf. We immediately then, in the afternoon, rigged our stages, purchases, and so forth, and went on discharging her. She was hauled ahead between twenty and twenty-one feet.

Int. 31. How did this bring her in relation to the place where the "S. B. Smith" and "Daybreak" had been?

Ans. It brought the hatch in the same place.

Int. 32. Was it or not, found in fact necessary to move the martingale to get into that place?

(Objected to as immaterial.)

Ans. It was not absolutely necessary; the martingale was clear of the wall when hauled ahead; but it was removed.

Int. 33. How much farther ahead, if any, could she have gone, than she was hauled?

(Objected to as immaterial.)

Ans. Ten feet, certain, safely.

Int. 34. How did she lie after being hauled ahead?

Ans. Very easy.

Int. 35. Did she or not suffer any damage there?

(Objected to as incompetent and immaterial.)

Ans. She did not.

Int. 36. State whether or not the captain of the "Bowdoin" ever complained to you of any damage there.

(Objected to as immaterial.)

203 Ans. He did not.

Int. 37. Describe the wharf at which the "Bowdoin" was hauled: State how, and of what, it is built, and how many berths there are for vessels to lie in on the side of the wharf to which the "Bowdoin"

came; also, how these berths differ from each other; and what, if anything, there is in the wharf to mark the division between them.

(Objected to as immaterial.)

Ans. So far as the tide leaves—the natural shore line—it is a solid wharf, surrounded by a stone wall and filled in with earth. From low-water mark to the harbor commissioners' line, it is what we call a pile wharf. The lower berth is a deep-water berth for ships and large vessels, and the dock is wide enough for two ships to lay there, in this deep water, one on each side. That is providing for the lower berth. Then each wharf is jogged out, narrowing the upper dock about five feet on each side. That is made safe for that class of vessels that lay aground —single-decked vessels. The jog or break in the wharf distinctly marks that separation.

Int. 38. Does the natural shore line and the stone wharf extend below the jog? If so, how much?

Ans. I can't say here precisely how much, but twenty to thirty feet, I should judge. The plan will show.

Int. 39. Does the piling in front of the stone work below the jog differ from the piling above the jog; if so, how?

(Objected to as immaterial.)

Ans. The wall recedes from the cap-sill, so that there are two rows of piles for a space, below the jog.

Int. 40. You have spoken of this wharf sloping outward from the top to the bottom; is or not this the way in which wharves are usually built?

(Objected to as immaterial.)

Ans. They are usually built so; yes, sir.

Int. 41. How are these two berths as to being safe or unsafe for vessels to lie in?

(Objected to as incompetent and immaterial.)

Ans. They are safe berths.

Int. 42. Has the coal ever been removed from the dock, or has anything been done to it?

204 (Objected to as immaterial.)

Ans. It has not been removed. So far as I know, it all lays as it did then.

Int. 43. State how, if at all, it affects the safety of the berths, or either of them.

(Objected to as incompetent.)

Ans. I don't think it affects the berths, as to their safety.

Int. 44. How many vessels, as nearly as you can state, have unloaded in that upper or shoal-water berth, since the coal fell in there?

(Objected to as immaterial.)

Ans. That would be a matter of supposition. We have used it just as often as it was necessary; perhaps twenty vessels; I have no means here of telling. I would say that a vessel of about the size of this "Bowdoin" requested permission to haul in there for safety and lay there all winter—some seventy-five days, I think.

Int. 45. How did the others compare in size and length with the "Bowdoin?"

(Objected to as immaterial.)

Ans. Some as large—the "Bowdoin" isn't a large vessel, by any means—and as long as the "Bowdoin."

Int. 46. State whether or not any of them have suffered injury lying there.

(Objected to as immaterial.)

Ans. Not that I am aware of.

Int. 47. After the "Bowdoin" had hauled out, did you examine this coal; if you did, when, and how often, and from what position or positions?

Ans. I did examine it; I think the next day after she had gone, and several times after; I went in a boat each time at about low water. I have seen it, I might say, a hundred times, from the wharf.

Int. 48. At low water, of the high tides, how much water is there, if any, opposite the deepest part of the pile of coal beside the keel track?

(Objected to as immaterial.)

Ans. The coal would be entirely out; there would be no water except what would be in the keel track.

Int. 49. Was there or not any coal in the keel track where the "Bowdoin" laid?

205 (Objected to as incompetent.)

Ans. I couldn't find any. There was none there.

Int. 50. How near to it did the coal run out?

Ans. It scattered out, in there a piece, very nearly to it. The bulk of the coal was inside three or four feet.

Int. 51. How deep was the coal in the deepest place?

Ans. The deepest place at first was close by the wall. It formed a little apex there. I should think the deepest place might be a foot and a half thick; that was before it was disturbed.

Int. 52. What was under the coal?

Ans. Soft mud.

Int. 53. Was the mud before the coal fell on it level to the wharf, or rising up there? If it rose up, how much above a level?

Ans. It would be an incline from the wharf to the keel track, and that comes in this way. We are always losing more or less coal in discharging, and things are constantly dropping from the wharf right down there; and then the vessels squeeze it up.

Int. 54. Was there anything about this coal, as seen by you immediately after the "Bowdoin" hauled out, from which you could tell whether a vessel had rested on it; if yes, what?

Ans. The coal lay lightly on the mud, easily pressed into the mud. That was evidence that the coal had not sustained the pressure. Then the coal was not broken. This was house-furnace coal. It has passed through crushers, and consequently isn't able to stand the pressure of coal just mined.

Int. 55. Have you recently examined that coal; if yes, how lately, and how did it then differ from its appearance when you saw it, soon after the "Bowdoin" went out?

(Objected to as immaterial.)

Ans. I have seen it quite recently. I saw it the last time this morning. It has been flattened out. The heavy ice of two winters has pressed it down and spread it some.

Int. 56. The deposition of Captain A. G. Haskell has been taken in this case. Will you state why his testimony was not had at the trial in the district court?

(Objected to as immaterial.)

Ans. I didn't know till the case was on trial that he knew any-

206 thing about it. The agent of the sugar works, seeing the case reported, asked me if I had seen Captain Haskell, and said that Captain Haskell had remarked when he paid him his freight, that he had told the captain he would get hurt if he lay there. The coal belonged to the sugar works. Captain Haskell wasn't about here and couldn't be got at.

Int. 57. Have you measured the coal in the dock; if so, when, and what was the result of the measurement?

(Objected to as immaterial.)

Ans. I have measured it. [There is a table by which we can compute the quantity of coal, and come at the quantity very nearly. It takes some forty-three cubic feet of coal to make a ton. That is the way I get it, measuring mud and all. By that computation, there wouldn't be over four tons there. The thickness isn't even. We have to approximate the thickness.]

(Part of answer in brackets objected to as incompetent and immaterial, by Mr. Lathrop.)

Int. 58. What, if anything, did the captain of the "Bowdoin" say to you on the Monday morning when his vessel was in trouble, about the coal in the dock?

(Objected to as immaterial.)

Ans. He made no complaint of the coal. The coal wasn't brought into question till the next day.

Int. 59. What, if anything, did he then say about the coal stage?

Ans. He didn't say anything to me about the stage.

Int. 60. What knowledge, if any, have you of vessels?

Ans. For fifteen years of this twenty that we have been (in) business we have owned vessels more or less. We owned in vessels down to 1862.

Cross-interrogatories by Mr. Lathrop, and answers of the witness thereto.

Cross-int. 1. In the latter part of October, and the first part of November, 1866, where was your counting-room situated?

Ans. On Water street, Charlestown, the same position it occupies now, at the head of the wharf.

Cross-int. 2. At the head of the west, or of the east wharf?

Ans. It is on the west wharf; but the building in which it is
207 is as much on one wharf as the other. That brings the counting-room on the west wharf.

Cross-int. 3. Is there not a gateway to the east wharf and one to the west wharf, and a building between the two gateways?

Ans. There is a gateway to each wharf, on Water street. This building is between the two.

Cross-int. 4. The counting-room is a small room in the southwestern corner of this building, is it not?

Ans. It isn't in the southwestern corner. It is in the northwestern corner, and is a room fifteen by twenty feet.

Cross-int. 5. It is in the corner formed by the west side and Water street, is it not?

Ans. Yes, sir. It isn't the corner; it takes that whole west side of the building. There is a large counting-room and a private counting-room.

Cross-int. 6. Are the buildings and runs now on the wharf the same that were there at the time above mentioned?

Ans. Yes, sir.

Cross-int. 7. What is there between the building where the counting-room is and the head of the dock?

Ans. The Fitchburg Railroad runs just in the rear of the building—a double track—which makes a roadway for us between the two wharves. And between the road and the dock are coal sheds.

Cross-int. 8. On the easterly wharf the run for discharging coal extends along the wharf by both the berths, above and below the jog, does it not?

Ans. It runs from the upper berth down some ways on the lower berth—yes, sir. It runs past the jog, above and below.

Cross-int. 9. How far below the jog does it extend?

Ans. I couldn't tell you; I never measured it.

Cross-int. 10. About how far?

Ans. Well, I should think it was sixty feet. It may be more, or less.

Cross-int. 11. Below the jog on the easterly wharf the bulkhead on which the run is built runs very near to the cap-sill of the wharf, does it not?

Ans. Yes, sir

208 Cross-int. 12. Is there a jog in the bulkhead and run to correspond with the jog in the wharf?

Ans. No, sir; they are supposed to be straight.

Cross-int. 13. The run and bulkhead above the jog are about five or six feet from the cap-sill, are they not?

Ans. About six feet, I should think—five or six feet.

Cross-int. 14. And the road which runs from the gate to the end of the east wharf is the other side of this run, is it not?

Ans. It is on the east side of the run.

Cross-int. 15. (De bene.) You spoke of a storehouse to which you fastened a purchase to the mast of the "Bowdoin." Where was this storehouse?

Ans. It was on the easterly side of the east wharf, immediately abreast of the schooner.

Cross-int. 16. What buildings and runs are there on the west wharf, besides those you have already mentioned?

Ans. On the other side of the dock, on both sides of the west wharf, are runs where we run cars; and pretty well down on the pier is quite a large building—below where the "Bowdoin" was.

Cross-int. 17. On which side of the west wharf is this building?

Ans. It is from side to side, covering all the area. There is a roadway right beneath it, through an archway.

Cross-int. 18. This roadway through it is the roadway leading from the gate on the street to the end of the wharf, is it not?

Ans. Yes, sir.

Cross-int. 19. Is there a run extending from this building on the west wharf, on the easterly side of the roadway; if so, where does it run to?

Ans. There is. It runs up the wharf, almost to the counting-room. It is not a bulkhead. It is a railroad in the air, supported by posts beneath, set at distances of thirty or forty feet.

Cross-int. 20. Is the cap-sill on the westerly side of the east wharf the same that was there at the time the "Bowdoin" was injured?

Ans. There has been some new put on, partially, since. There was a little repairing done there last fall.

Cross-int. 21. How much of the cap-sill is new? From where to where does it extend?

209 Ans. From the jog in the wharf; I don't know how far; fifty or sixty feet, I guess; and below the jog, as much more. The posts are the same, no new ones driven.

Cross-int. 22. At the time the captain came to you to report his arrival, do you know, of your own personal knowledge, whether his vessel was at the west or east wharf?

Ans. When he reported to me he was at the east wharf. I looked out

and saw his vessel. It had just come up, and was at the east wharf, heading towards the bridge. She wasn't fast then, as I said before; just hanging there. The captain had come ashore for instructions.

Cross-int. 23. At which wharf did you direct him to lie?

Ans. I told him to hang on outside there; that he would have to hang on outside till we could get rid of some of the vessels; that, unfortunately, he would have to wait. I don't think I told him which wharf to hang on to, for it was quite immaterial. There were laying at the end of the wharf, at that time, the schooners "S. A. Hammond," "Mary D. Haskell," "Daybreak," and I think another one. The "Bowdoin" would have to lay outside at either pier.

Cross-int. 24. (De bene.) You knew, on Saturday afternoon, that the "Bowdoin" was coming in on Sunday, did you not?

Ans. I did not. I supposed she was coming in on Saturday. I was very much disturbed to find she wasn't in. It (was) a loss, considerable to us.

At five o'clock p. m., adjourned to April 28th.

Cross-int. 25. (De bene.) At what time on Saturday did you know that the "Bowdoin" had not hauled in?

Ans. It was, perhaps, the middle of the afternoon; I had just got back from Boston.

Cross-int. 26. (De bene.) Did you not know then that orders had been given that the "Bowdoin" should haul in on Sunday, so as to be ready to discharge Monday morning?

Ans. I did not.

Cross-int. 27. (De bene.) Did you make no inquiries when she was coming in?

Ans. No, sir. I made no inquiries when she was coming in. I asked why she was not in.

210 Cross-int. 28. On Monday morning, when you first went on the wharf, where on the top of the run was the movable stage?

Ans. It had been moved down the wharf, and was hanging by the vessel's tackles. One end was resting on the tackles, and the other on the run.

Cross-int. 29. On what part of the run was it, with reference to the jog?

Ans. My impression is that is was very nearly half way down to the jog. That isn't definite enough in my mind. What I mean is, half way down from the upper end of the bulkhead to the jog. That is as near as I could possibly tell about that.

Cross-int. 30. At the time you saw it, had the attempt to run it out to the hatchway to unload the vessel been abandoned?

Ans. Yes, sir; it was out as far as it would go, but too short.

Cross-int. 31. (De bene.) How far was the stern-post of the vessel from the wharf? I mean the shortest distance from the stern-post to the wharf.

Ans. I should say twenty-five feet. It must have been more than that, twenty-five to thirty feet.

Cross-int. 32. (De bene.) Did you not testify at the trial of this case in the district court that on Monday morning, when you had the conversation with the captain, he said, in reply to you, that he had placed the vessel where the mate told him?

Ans. I don't think I did. I have no recollection of any such thing.

Cross-int. 33. (De bene.) Is your recollection about the conversation

you had on that Monday morning more distinct now than when you testified in the district court?

Ans. My recollection is very good. It is distinct in my mind. (To interrogatory repeated.) I have thought the thing over a great deal since then, and what occurred. There was a great deal of blame found then with the mate and everybody. I wouldn't say that the captain didn't say so.

Cross-int. 34. (De bene.) After the vessel hauled ahead, did you direct the large spar fender to be used?

Ans. I couldn't say as to that. I suggested that it be used before.

Cross-int. 35. (De bene.) This big spar fender was not ordinarily used by vessels lying in the upper berth at the eastern wharf, was it?

211 Ans. Not very often. Vessels generally had their own fenders. It was floated from place to place, as wanted.

Cross-int. 36. (De bene.) It was more commonly used at the west wharf, was it not?

Ans. As much at one wharf as the other.

Cross-int. 37. (De bene.) Was it not more commonly used at the west wharf, or at the lower berth at the east wharf, than at the upper berth at the east wharf?

Ans. Yes, sir; usually used in the floating berths—a floating fender.

Cross-int. 38. (De bene.) When you saw the vessel on Monday morning you say her bow was pretty close to the wharf. Please state how far from the cathead was the part of the bow which first touched the wharf.

Ans. I couldn't tell you just how many feet. It was evident that had she been upright the turn of the bow would have been against one of these fender posts. She was listed so that her rail might have been three or four feet from the cap-sill.

Cross-int. 39. What do you mean by the turn of her bow?

Ans. Where it leaves the straight part of the vessel and turns—the bow

Cross-int. 40. (De bene.) Was it when you first went down on Monday morning that you stood at the head of the dock and looked at the coal?

Ans. Well, it was pretty soon after I got there; I couldn't tell precisely about that. I was 'round there some little time. It was quite exciting there for some time. I couldn't say it was the first moment.

Cross-int. 41. (De bene.) Was your object in looking to see whether the coal did touch the vessel?

Ans. No, sir; not particularly.

Cross-int. 42. (De bene.) How far were you from the coal when standing on the wharf at the head of the dock?

Ans. Well, I was a hundred feet.

Cross-int. 43. (De bene.) Some of the coal was then under water, was it not?

Ans. No, sir; it didn't appear to be; not when I was looking at it.

212 Cross-int. 44. (De bene.) Do you mean that none of the coal was under water when you stood on the wharf at the head of the dock, and looked at the vessel?

Ans. Unless there was some scattering. The pile of coal was all out of water—the bulk of it.

Cross-int. 45. (De bene.) When the vessel was hauled ahead, you say her hatch was in the same place where the hatches of the "Daybreak" and the "Smith" had been. How was the bow of the "Bowdoin," in

respect to the place where the bow of the "Daybreak" and the bow of the "Smith" had been?

Ans. I couldn't say certainly. Much the same as the "Daybreak;" the vessels were much the same; I shouldn't think there could be a difference of more than a foot or two. The "Smith" was an old style of vessel, a brig, and I don't think she was as long. I couldn't say certainly.

Cross-int. 46. (De bene.) When the "Bowdoin" was hauled ahead, was not her martingale over the wall at the bow of the dock?

Ans. Her martingale was just clear of the wall in the dock; it was not over the wall; it just came to the wall. Vessels will range ahead on their lines; and, that it might not catch on the wall, it was turned up.

Cross-int. 47. In your description of the east wharf you say the upper part was solid, surrounded by a stone wall. What, if anything, was there outside of this wall?

Ans. Fender posts driven, the object of which is that vessels may lay easy. They wouldn't lay easy against a stone wall—would chafe.

Cross-int. 48. These fender posts have the same slope as the wall, do they not?

Ans. About the same; I think these have a little more. The bottom course of stones is usually wider than the rest, and consequently throws the foot of the posts out a little.

Cross-int. 49. (De bene.) You say you measured the coal in the dock. When did you do this?

Ans. I have estimated it at various times. I did at the time, several times since, and again yesterday morning.

Cross-int. 50. (De bene.) What do you mean by "at the time?" Do you mean before or after the "Bowdoin" was injured?

213 Ans. After the "Bowdoin" was injured, after she had gone out of the dock; and I estimated it while the "Smith" was discharging by measuring with my eye the hole in the bulkhead.

Cross-int. 51. (De bene.) Did you measure it before yesterday morning in any other manner than by your eye?

Ans. I measured along on the wharf, from the jog to the extreme point of the coal.

Cross-int. 52. (De bene.) Where did you make that measurement, and what was it?

Ans. I measured on the wharf several times; I can't tell you the date; I did at the time, and have several times since, when I had somebody with me. It is all out of water at low-water. The extreme length of the coal, commencing at the jog, is twenty-seven feet. The coal extends from the jog 'round in a circle to the wharf. The average width is eight feet; it has now been flattened out by the ice.

Cross-int. 53. (De bene.) Did you ever measure the coal before yesterday morning, except in the manner you have mentioned?

Ans. Never; except as I now state.

Cross-int. 54. (De bene.) Describe how you measured it yesterday morning.

Ans. I measured it on the cap-sill of the wharf, by measuring with the tape-line the length, estimating the width of it, and sticking a pole through it into the mud, to get the thickness. It appears to be six inches thick on an average. In my estimate I have called it nine inches thick; I don't think it is as thick as that.

Cross-int. 55. (De bene.) How high above the mud is it now, in the highest place?

Ans. That would be hard to tell, as the mud has washed through it. Constant wash has carried the mud into it, so that it isn't very high above the mud.

Cross-int. 56. (De bene.) Your estimate then, is founded upon the assumption that the coal is twenty-seven feet long, eight feet wide, and nine inches thick, is it?

Ans. Yes, sir.

Cross-int. 57. (De bene.) On Monday morning, when you first went down to the wharf, where was the big spar fender you have mentioned?

214 Ans. Laying at the head of the dock; right across the end of the dock from the east to the west wharf. One end is fastened, and the other floats around. It was fastened at one end then, and the other end rested on the fluke of the "Bowdoin's" anchor.

Cross-int. 58. (De bene.) Do you mean that one end was fastened to the west wharf, and the other end was resting on the fluke of an anchor of the "Bowdoin"?

Ans. Yes, sir.

Cross-int. 59. Did you not have a vessel run into while lying at the end of one of the wharves now occupied by you at Charlestown, by a vessel being towed by the steam-tug "Rescue?"

Ans. A vessel of my own laying there some years ago, a tug-boat backed a ship into her. I suppose that is the case you have reference to. In winding the ship, they backed her into our barque.

Cross-int. 60. At which wharf was this vessel of yours lying?

Ans. At the westerly pier.

Cross-int. 61. You testified in the district court, did you not, that if the vessel had been ten feet further ahead than where you found her on Monday morning, she would not have been injured?

Ans. That would be my judgment about it. If she had been in her berth ten feet farther ahead—if she had been breasted in, she wouldn't have been injured, in my judgment.

Re-direct interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 61. How high is the bulkhead on the east wharf?

Ans. It is about fifteen feet. I couldn't say certainly.

Int. 62. What was there, if any thing, to obstruct the view of a vessel lying where the "S. B. Smith" and "Daybreak" did, to a person going up or down the west pier?

Ans. There was a plenty of open space opposite on the other pier. I suppose there were piles of coal up and down the wharf; but immediately opposite, the other berth was vacant, and the wharf was open. A person couldn't pass up and down the west wharf without having a full view of the "Daybreak."

Int. 63. You said yesterday that when the "Bowdoin" was first
215 reported, she was at the east pier. At which pier did she lie, while she was waiting for the other vessels?

Ans. She hauled up to the west pier. I think she remained there till Saturday; till she attempted to haul in.

Int. 64. How are those places at the head of the piers as to being safe or unsafe for vessels to lie at?

Ans. I consider them safe.

Int. 65. You speak of vessels usually having their own fenders; what kind of fenders, upright fenders, or horizontal fenders, do they usually have?

(Objected to as immaterial.)

Ans. Both horizontal and upright.

Int. 66. How deep did you find the coal in the dock in the deepest place, when you measured it yesterday morning?

Ans. I don't think it is a foot in any place.

Int. 67. State whether or not you found it difficult to get the pole through it to the mud in the deepest place.

Ans. Well, not very; it is more difficult in the deepest place than in a shoal place.

Re-cross-interrogatories by Mr. Lathrop, and answers of the witness thereto.

Cross-int. 62. Is there not generally more or less coal piled on the west wharf, on the space between the upper berth and the roadway?

Ans. It is frequently there.

Cross-int. 63. How high is it piled there?

Ans. When piled at all, it would be as high as the run; dumped off from the run.

Cross-int. 64. How high is the run?

Ans. Fifteen feet, or thereabouts.

Cross-int. 65. Can you swear that there was not more or less coal piled on this place in the latter part of October, 1866?

Ans. I can swear that at the time of the discharging of the "Smith" and "Daybreak," there was not, because we used our engine over that side. I was down there myself, and helped place the engine.

Cross-int. 66. How much space does this engine take?

216 Ans. The engine and appurtenances would take about ten feet square—portable house, water casks, shafts, and all.

Cross-int. 67. Where on the west wharf was this engine?

Ans. It was pretty nearly up to the head of the dock, on the side of the wharf; perhaps within fifteen or twenty feet of the head of the dock.

Cross-int. 68. How near the cap-sill of the wharf was it?

Ans. There is a plank platform on that side; it was from the cap-sill, I suppose, ten to fifteen feet; it was nearly to the roadway of the wharf, just out of the roadway.

Cross-int. 69. Can you recollect distinctly whether or not there was any coal piled on that wharf between the place where the engine was and the storehouse further down the wharf?

Ans. I can't tell at this time.

Re-direct testimony.

At the close of the cross-examination, the witness desired to add to his statement of the position of the vessel on Monday morning.

Ans. 68. As she lay, her bow was considerably higher than her stern; and the vessel being listed off, made the angle of sight under of her bottom; there was nothing to break the sight under her bottom; you could see fore and aft.

Interrogatory by Mr. Dodge, and answer thereto.

Int. 69. Why have you not taken the coal out of the dock?

(Objected to as immaterial.)

Ans. What may easily be done at any time, is hardly ever done; we have been postponing it from time to time; didn't think it anything material.

Cross-interrogatory by Mr. Lathrop, and answer thereto.

Cross-int. 70. (De bene.) Was not the keel of the vessel resting on the mud from amidships forward?

Ans. It was; yes, sir.

SAMUEL OAKMAN.

217 Deposition of GEORGE L. GREEN, a witness for respondents and appellants; taken before Charles F. Walcott, notary public, April 29, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. George L. Green, Boston; I act as agent, owner and agent, of vessels.

Int. 2. State fully to what extent you are acquainted with vessels, and what opportunity you have had of being so acquainted.

Ans. I have been master of a vessel some twenty years, from Boston; for the last eight years, I have acted as owner and agent of vessels, discharging and loading.

Int. 3. In what kind of business were you engaged as master, and of how many vessels have you acted as agent, and in what business have they been engaged?

Ans. Coasting business, as master, from all our southern ports, mostly to Boston. Most of these vessels have been engaged in the coal trade in the summer season; West India and southern trade in the winter. I have acted as agent of some ten vessels, I believe. They have been engaged in the coal trade in summer; southern and West India trade in the winter. All these vessels have brought coal mostly to Boston.

Int. 4. Are you or not acquainted with the wharfs in Boston and vicinity?

Ans. I am some; I might say considerably.

Int. 5. Where there is a jog in a wharf, to the depth of four or five feet, what, if anything, does it indicate as to the berths adjoining the wharf?

(Objected to as incompetent and immaterial.)

Ans. I consider where there is a jog in the wharf, it always indicates two berths; one different from the other, as a general thing; one shallower than the other. When we go to a jog, we are always very particular to haul our vessel square with the jog, and not lay by the
218 jog. I never lay a vessel by a jog without instructions from the wharfinger. There are but a very few jogs in Boston, but where there is a difference in the water; generally the lower berths are dug out, the upper ones are not.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto; all put de bene esse.

Cross-int. 1. What is your age and residence, and where is your place of business in Boston?

Ans. Forty four years of age; Winthrop street—no number—corner of Winthrop street and Grove Hall avenue; my place of business is 113 Commercial street. Winthrop street was formerly in Roxbury, now in Boston.

Cross-int. 2. Have you talked over the merits of this case with Mr. Oakman, one of the defendants?

Ans. Nothing of the merits of the case; no, sir.

Cross-int. 3. How often have you talked with him about the case?

Ans. Only once, yesterday afternoon; he merely asked me to give my deposition with regard to the affair.

GEORGE L. GREEN.

Deposition of ROBERDEAU BUCHANAN, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, April 29—30, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. Roberdeau Buchanan; I reside in Charlestown; my business is civil engineer and surveyor.

Int. 2. How long have you been a civil engineer and surveyor?

Ans. About 7 years engaged in the business; a student for some time before that.

219 Int. 3. Do you know the dock and wharfs in Charlestown occupied by Oakman & Eldridge; if so, how long have you known them?

Ans. I know the wharves and dock; my attention was first particularly called to them 17 months ago.

Int. 4. Have you made measurements, surveys, and soundings about said dock and wharfs; if you have, when did you make them?

Ans. I have; I made them when my attention was first called to the dock and wharfs, and also within the past few days.

Int. 5. If you have measured, state what is the length of the westerly side of the wharf on the east side of the dock, from the head of the dock down to the jog, and how deep is the jog?

Ans. It is 125 feet from the head of the dock to the jog, on the easterly side of the dock; the jog is 5 feet, 4 inches deep.

Int. 6. How much, if any, does the face of the wharf slope outward, from the top to the bottom?

Ans. The wall itself slopes 7 inches at the jog, but the outside of the fender post, from the coping of the wall, is a little more than 3 feet; the bottom of the post is a little over 3 feet further out than the coping of the wall; the outside of the fender post, at the bottom of the post where it enters the mud, is 2 feet further out than where the post begins to slope at the top; the post is cut in a little, where it joins the cap-sill, because the cap-sill is smaller.

Int. 7. You speak of the slope, at the jog; how is it in other places on the wharf, if there is any difference?

Ans. I think that all the piles are similar to this one; generally similar to this one.

Int. 8. What does the paper marked with your name, now shown you, represent? (The paper here shown to the witness has been marked "C. F. Walcott, not. pub., Exhibit I," by the magistrate.)

Ans. It shows a section of the wharf, at the jog, showing the wall and fender post.

Int. 9. What is the length of that wharf, below the jog?

Ans. 179½ feet.

Int. 10. Is there, or not, any slope to the outside posts and piles below the jog?

(Objected to as immaterial.)

Ans. There is.

120 Int. 11. How much?

(Objected to as last.)

Ans. I didn't measure it, but I should judge about 1 foot in 5 or 10; they probably slope as much as this one (referring to the plan inquired of in the eighth interrogatory.)

Int. 12. What is the width of the dock, if you measured it, above the jog?

Ans. It's about 50 feet. I measured it, in measuring for sections across the dock.

Int. 13. Have you made any soundings in the dock? If you have, state fully where you have made soundings.

Ans. I have. I made soundings along the keel tracks on each side of the dock—in the keel tracks; and also across the dock—6 cross sections; the cross sections were taken near the jog.

I made soundings in the easterly keel track, at 17 feet from the head of the dock; at 50; at 75; 100; 110; 120; 125; 130; 140; 150; 160; 170; 180; 200; 250; 300. On the southwesterly keel track, I made soundings at 50 feet from the head of the dock; 75; 100; 125; 150; 175; 250; that was all, the end of the dock being 15 feet beyond the last one. On the cross sections, one cross section was 25 feet below the jog; one 15 feet below; one 5 feet below; at the jog; 10 feet above the jog; 20 feet above the jog. The soundings on these cross sections were taken 10 feet apart, measuring from the wharf on the northeasterly side.

Int. 14. How far out, horizontally from the cap-sill of the easterly wharf, is the keel track above the jog?

Ans. 17 feet and 3 inches from the outer portion of the cap-sill.

Int. 15. What depth below mean low water, did you find at your several keel-track soundings, on the easterly side?

Ans. The sounding at 17 feet from the head of the dock was $1\frac{7}{10}$ feet above mean low water; the sounding at 50 feet from the head was $1\frac{2}{10}$ feet below mean low water; at 75 feet, $1\frac{6}{10}$; at 100, $2\frac{4}{10}$; at 110, $3\frac{9}{10}$ feet; at 120 feet, $4\frac{7}{10}$; at 125, $3\frac{4}{10}$; at 130, $5\frac{3}{10}$; at 140, 6 feet; at 150, $7\frac{9}{10}$; at 160, $8\frac{6}{10}$; at 170, $9\frac{6}{10}$ feet; at 180, $10\frac{6}{10}$; at 200 feet, $11\frac{8}{10}$; at 250, $13\frac{4}{10}$; at 300, $18\frac{2}{10}$ feet.

221 Int. 16. How far out from the piles are the soundings for the keel track, on the easterly side, below the jog—at 130 and 140 feet—from the head of the dock?

Ans. They are 5 feet and 4 inches further than those taken above the jog; as the width of the jog is added.

Int. 17. State whether or not you found at these places, 130 and 140 feet from the head of the dock (and below the jog) and keel mark.

(Objected to as immaterial.)

Ans. It was not so decidedly marked as it was above.

Int. 18. State precisely what mark or indentation of a keel you found at these two places. If you found any, answer fully.

(Objected to as immaterial.)

Ans. I could not detect the keel track so plainly there as on the other sections, because the water, being deeper, prevented my seeing the bottom; at other points I could see the bottom at low water.

Int. 19. (Withdrawn.) State whether or not at these two places you found any indentation or keel mark. How did you ascertain what you supposed to be keel track at these places?

(Objected to as leading, because the witness has already answered the question, and as immaterial. After this question had been read in the presence of the witness, and the above objections had been made,

Mr. Dodge offered to withdraw the first clause, and put another question, but Mr. Lathrop objected to the withdrawal of the question from the record.)

Int. 20. State exactly how you found the place to sound for what you called keel track, at the places 130 and 140 feet from the head of the dock, and what you found.

(Objected to, the witness having already answered the question, and as immaterial.)

Ans. I kept myself at a certain distance from the wharf by sighting up the dock, keeping myself in the direction of the keel track, which I could see above; in the cross sections the soundings were taken every 10 feet from the wall; I did not, at that time, look particularly for the keel track. I don't remember that I found anything; I sounded on mud; I found mud in sounding.

Int. 21. Did you or not make more than one sounding at each of these places, 130 and 140 feet below the head of the dock?

Ans. I did; I made soundings across the dock, 10 feet apart; 10 feet distant from each other.

222 Int. 22. State what difference of depth, if any, you found at what you called keel track, at 130 and 140 feet below the head of the dock, and at the cross-section soundings nearest to those points. Speak of each of them.

Ans. The cross-section soundings were taken at those points; the difference in depth of the water in the northeasterly keel track at those points was one foot.

Int. 23. Between what two soundings was there a difference of 1 foot?

Ans. Between the soundings in the northeasterly keel track at 130 and 140 feet from the head of the dock.

Int. 24. How far from the wall were the soundings for the keel track, made at 130 feet from the head of the dock?

Ans. About 20 feet.

Int. 25. How far was the sounding at the same point, for the cross section, made from the same wall?

Ans. I did not take any particular measurement for the keel track; I took them at every 10 feet, supposing that I should get a perfect contour of the bottom. The keel track is about 20 feet from the wall, which (the keel track) is one point where I took soundings. (On reading the answer over to the witness, he said:) I took these soundings on the cross sections every 10 feet across the dock, and the sounding at 20 feet from the wall, in these cross sections, was in the keel track. This applies to the sounding at 140 feet from the head of the dock, as well as to that at 130 feet.

Int. 26. State, then, whether or not at or near the point 130 feet from the head of the dock, and 20 feet from the wall, you made more than one sounding.

Ans. I made one within 5 feet of this point, at the cross section above it; and with this exception, none nearer than 10 feet.

Int. 27. State how this is as to the point 140 feet from the head of the dock, and 20 feet from the wall.

Ans. I made no soundings within 10 feet of that point; no other soundings.

Int. 28. Now state your means of knowing when you were in the keel track at 130 and 140 feet from the head of the dock.

(Objected to, the question having already been answered.)

223 Ans. I sighted myself in line with the keel track. I could see above.

Int. 29. Now please give the depth of your soundings for the keel track on the opposite side of the dock?

Ans. At 50 feet from the head of the dock, the sounding is $\frac{3}{10}$ of a foot below mean low water; at 75 feet, $\frac{4}{10}$ of a foot; at 100, $2\frac{1}{10}$; at 125, $10\frac{8}{10}$; at 150, $13\frac{7}{10}$; at 175, $14\frac{9}{10}$; at 250 feet, $14\frac{8}{10}$.

Int. 30. Now give the cross-section soundings.

Ans. At 140 feet below, at the northeasterly wall, $\frac{2}{10}$ of a foot above mean low water; 10 feet out, $2\frac{3}{10}$ below; 20 feet out, $4\frac{3}{10}$; 30 feet out, $9\frac{3}{10}$; 40 feet out, $12\frac{8}{10}$; 50 feet out, $12\frac{8}{10}$; at the opposite wall, $9\frac{8}{10}$. At 130 below the head of the dock, $\frac{7}{10}$ above, at the northeasterly wall; 10 feet out, $\frac{8}{10}$ below; 20 feet out, $3\frac{3}{10}$; at 30 feet out, $7\frac{8}{10}$; at 40 feet out, $11\frac{8}{10}$; 50 feet out, $10\frac{3}{10}$; at the further wall, $7\frac{3}{10}$. At 125 from the head of the dock, at the jog, at the wall, $\frac{9}{10}$ above: 10 feet out from the wall, above the jog, $1\frac{1}{10}$ below; at 20 feet, $3\frac{1}{10}$; at 30 feet, $9\frac{6}{10}$; at 40 feet, $10\frac{6}{10}$; at a little less than 50 feet—call it 45 feet—$10\frac{1}{10}$; at the further wall, $7\frac{1}{10}$. At 115 feet from the head of the dock, at the wall, $\frac{9}{10}$ above; 10 feet from the wharf, $1\frac{1}{10}$ below; 20 feet, $2\frac{9}{10}$; 30 feet, $7\frac{6}{10}$; 40 feet, $9\frac{1}{10}$; 50 feet, $7\frac{3}{10}$; at the wall, $3\frac{6}{10}$. At 105 feet from head of the dock, at the wall, $2\frac{4}{10}$ above; 10 feet out, $\frac{6}{10}$ below; 20 feet out, $1\frac{6}{10}$; 30 feet out, $2\frac{8}{10}$; 40 feet out, $5\frac{1}{10}$; 50 feet out, $1\frac{1}{10}$, a little more than 50 feet out at the wall. I also took another section, last year, at 150 feet from the head of the dock, at the wharf, $1\frac{7}{10}$ below; 5 feet out, $2\frac{9}{10}$; 10 feet out, $4\frac{2}{10}$; 15 feet out, $6\frac{7}{10}$; 20 feet out, $7\frac{7}{10}$; 25 feet out, $8\frac{7}{10}$; 30 feet out, $10\frac{7}{10}$; 35 feet out, $12\frac{5}{10}$; at the further wall, 8 feet.

At 3 o'clock, p. m., the hearing was adjourned until 10 a. m., to-morrow, April 30, at the same place.

April 30, 1868, 10, a. m., the hearing was resumed, pursuant to adjournment, the parties being respectively represented by the same counsel as at the previous hearing.

Int. 31. What is the paper now shown you, and what part of it, if any, is made by you?

(The paper here shown to the witness has been marked by the magistrate, "Exhibit 2, C. F. Walcott, R. Buchanan, April 30, 1868.")

224 Ans. It is a plan of Mr. Oakman's dock which was handed to me when I was desired to make sections of the dock, and put them on this plan.

Int. 32. State in detail all that is put on that plan by you, and what it represents.

Ans. First, through the dock I drew two red lines along the keel tracks; these lines are marked A B and C D, and I have placed on the plan a section on each line; these sections are marked, "section on the line A B," and "section on the line C D." I also drew across the dock the lines E F, G H, I K, L M, N O, P Q, and gave sections of the dock on each of those lines; I also made a slight correction of the location of the jog on the northeast side of the dock.

Int. 33. What was the correction? State fully.

Ans. In measuring, I found the distance of the jog to be just 125 feet from the head of the dock; the plan shew the jog to be about 3 feet above that point, and I made that correction on the plan.

Int. 34. State where each of the cross sections is drawn.

Ans. E F, 25 feet below the jog; G H, 15 feet below the jog; I K, 5 feet below the jog; L M, at the jog, that is 125 feet from the head of the dock, N O, 10 feet above the jog; P Q, 20 feet above the jog.

Int. 35. What do the black irregular lines in the lengthways and cross sections represent?

Ans. The surface of the mud.

Int. 36. State whether or not the surface of the mud is correctly shown by these lines, according to your soundings.

Ans. It is.

Int 37. On what scale in your work on the plan?

Ans. 20 feet to 1 inch; the same scale that the plan was originally drawn; all my measurements on the plan are on that same scale.

Int. 38. You told us yesterday, that at the point on the lengthways or keel track line, east side, 130 feet below the head of the dock, there was 5 and $\frac{3}{10}$ feet of water; and, at the same point, in giving your cross-section soundings, you said there was 3 and $\frac{3}{10}$ feet of water. Please explain these statements.

(Objected to as incompetent and immaterial.

225 Ans. When I gave my answer, I knew of no discrepancy; the soundings on the longitudinal section A B, were taken November 26th, 1866; the soundings on the cross sections were taken April 27th, 1868. I notice now, for the first time, that they do not agree. The bottom might possibly have changed during the intervening time of taking the sections; and the five cross sections taken recently were done much more carefully than the others by the arrangements made to keep the boat inwhich I was steady.

Int. 39. In like manner, for the keel-track soundings, at 140 feet below the head of the dock, you gave 6 feet; and for the cross section, 4 feet and $\frac{3}{10}$. What explanation can you give of that?

(Objected to as last.)

Ans. The same answer would apply to that.

Int. 40. Please examine your book, and see if there has not been some error in your figures or calculations?

Ans. (The witness examined his book, and then said:) I do not perceive any mistake in the figuring.

Int. 41. Have you examined the piles below the jog in relation to their slope?

Ans. I examined them this morning; I find them to be vertical, and not inclined, as I supposed yesterday; I only to-day first examined them particularly. By vertical, I mean essentially so, regardless of slight irregularities.

Int. 42. State whether or not at any time or times, and when, you examined the coal lying in that dock.

Ans. My attention was first called to it about 17 months ago, and also recently. I examined it particularly yesterday.

Int. 43. When, exactly, did you make the first examination of the coal, and what examination did you then make?

Ans. In November, 1866, about the 19th or 26th, I noticed the position and dimensions of it.

Int. 44. Did you or not at that time examine the keel track opposite to it?

(Objected to as immaterial.)

Ans. I did.

Int. 45. State whether or not there was any of this coal in the keel track, opposite the pile of coal, or elsewhere, at that time.

(Objected to as immaterial and incompetent.)

226 Ans. I did not notice any in the keel track, nor did I find any by running an oar into the mud in the keel track. [I don't think there was any in the keel track.]

(Part of answer in brackets objected to by Mr. Lathrop, as incompetent and immaterial.)

Int. 46. What examination did you make of this coal yesterday?

(Objected to as last.)

Ans. I measured the length, breadth, and thickness of it; and estimated the contents. It was an irregular mass, the length of it being 27 feet, only a few scattered pieces beyond that length; the width varied from 7 to 10 feet; the thickness from $\frac{1}{2}$ of a foot to 1 foot and $\frac{1}{2}$, on a ridge, on what I thought to be the deepest portion; and the contents I make to be 191 cubic feet, or 4 and $\frac{45}{100}$ tons, allowing 43 feet to a ton.

Int. 47. How does the coal lie in relation to the jog, and where is the deepest part of it?

Ans. The lower end of the pile is at the jog, the deepest part is about 18 feet above the jog, and the ridge extends lengthwise with the pile towards the lower end, and is about 5 feet from the wall.

Int. 48. In getting your measurements for the cross-section soundings below the jog, from what did you measure?

(Objected to, the question having already been answered.)

Ans. The measure was laid off on the rope to which the boat was attached; it was measured from the upper portion of the wharf. I measured from the piles; below the jog, they are vertical.

Int. 49. What was under the coal in the dock?

Ans. The mud of the dock; after digging down a few inches, mud was found mixed with the coal; the holes were dug down until we got through the pile of coal.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) At the time you measured in the dock, in November, 1866, did you take minutes of your measurements, and have you those minutes with you?

Ans. I did take measurements; I have them with me.

Cross-int. 2. (De bene.) State fully where these measurements were taken, and what they are.

227 Ans. In the 2 keel tracks, except 2 or 3 soundings in the upper portion of the westerly keel track, and the cross section 150 feet below the head of the dock, being the same as I gave in an answer yesterday.

Cross-int. 3. (de bene.) Please state each and every figure you have of soundings made by you in that dock, in November, 1866, without reference to soundings since made, or any answer you have given in this case.

Ans. In the northeasterly keel track, 17 feet from the head of the dock, sounding $1\frac{7}{10}$ above mean low water; 50 feet, $1\frac{2}{10}$ below; 75, $1\frac{6}{10}$; 100 feet, $2\frac{4}{10}$; 110, $3\frac{9}{10}$; 120, $4\frac{7}{10}$; 130, $5\frac{3}{10}$; 140, 6 feet; 150, $7\frac{9}{10}$; 160, $8\frac{6}{10}$; 170, $9\frac{6}{10}$; 180, $10\frac{6}{10}$; 200, $11\frac{8}{10}$; 250, $13\frac{4}{10}$; 300, $18\frac{2}{10}$. Southwest keel track, 150 feet from the head of the dock, $13\frac{7}{10}$ below; 175, $14\frac{9}{10}$; 250, $14\frac{8}{10}$. And all the soundings taken on the cross section 150 feet below the head of the dock; at the easterly wharf, $1\frac{7}{10}$ feet below; 5 feet from the wharf, $2\frac{9}{10}$; 10 feet. $4\frac{2}{10}$; 15 feet, $6\frac{7}{10}$; 20 feet, $\frac{7}{10}$; 25 feet, $8\frac{7}{10}$; 30 feet, $10\frac{7}{10}$; 35 feet, $12\frac{8}{10}$; at the wharf, about eight. The memoranda which I have in my book are given in what is termed grade heights, the base line being 20 feet below the coping of the dry dock in the navy yard, and in giving each answer I have had to reduce from grade heights to soundings at mean low water.

Cross-int. 4. (De bene.) Please show me in your book the figures made in November, 1866, that relate to the measurement in the dock by the westerly wharf.

Ans. (The witness shew Mr. Lathrop his book, and Mr. Dodge objected to conversations between the witness and Mr. Lathrop.)

Cross-int. 5. (De bene.) Please annex a copy of all the figures of measurements made by you in November, 1866, in the dock by the westerly wharf, and explain them.

Ans. I annex a copy. (The paper here produced and annexed by the witness has been marked by the magistrate "Exhibit 3, R. Buchanan, C. F. Walcott.") The first column has no heading. In the column is a sounding taken from the middle of a ship which was lying in the dock; and I have no recollection of anything else about that sounding—of the location of it. The sounding is $8\frac{1}{10}$, therefore the grade height is minus $4\frac{8}{10}$. Column 2 gives the station on the southwest side of the dock.
Column 3, bottom of the dock below the water at the time the
228 soundings were taken. Column 4, the soundings reduced to grade height. Column 5, marked plan, is not filled up.

Cross-int. 6. What is the formula for reducing grade height to mean low-water height?

Ans. Mean low water is, at grade height, five feet above the base. By adding or subtracting 5 feet from the sounding, it will give the grade height.

Cross-int. 7. (De bene.) Please reduce the sounding in column 1 to mean low-water height.

Ans. It is 9 feet and $\frac{8}{10}$ below mean low water.

Cross-int. 8. (De bene.) What is the meaning of "end + 65," near the top of the second column in Exhibit 3?

Ans. The word end refers to the end of the wharf towards the sea. There isn't any "end + 65" there. The 65 means station 2 + 65.

Cross-int. 9. (De bene.) Explain where on the westerly side of the dock the figures in column 2 denote that the soundings were made.

Ans. They denote that they were taken at those stations; commencing at the bottom, engineer's notes run upwards. Station 0 is at the head of the dock; station 1 is 100 feet distant; station 2 is 200 feet distant. These are units in measurement plus 25 plus 50, and so forth; mean plus, so many hundredths of a station—$\frac{25}{100}$, $\frac{50}{100}$, of a station.

Cross-int. 10. (De bene.) Do the figures in column 3 represent the depths at the points designated by the figures on the lines with said figures in said column 3?

Ans. They do.

Cross-int. 11. (De bene.) And is this so in regard to the figures in the fourth column?

Ans. It is.

Cross-int. 12. (De bene.) I notice a line drawn through the figures 6, 7, in the fourth column. Do you intend this to be struck out, or not?

Ans. It's a copy of my notes. Yes, it is struck out in my notes; therefore it is intended to be struck out in the copy. I gave a copy of my notes as they are. I might say often, instead of erasing, I draw a line through figures.

229 Cross-int. 13. (De bene.) Please state the height which the figures in column 4 make, when changed to denote height at mean low water.

Ans. I have given those twice before: $8\frac{7}{10}$ means $13\frac{7}{10}$ sounding; minus $9\frac{9}{10}$ means $14\frac{9}{10}$ sounding; minus $9\frac{8}{10}$ means $14\frac{8}{10}$ sounding; by sounding, I mean sounding at mean low water.

Cross-int. 14. You were present at the trial of this case in the United States district court, were you not?

Ans. I was.

Cross-int. 15. At that trial you presented a plan of Oakman & Eldridge's dock, did you not?

Ans. I presented it, or it was shown to me. I gave testimony concerning the same, and about the additions I had made thereto.

Cross-int. 16. Have you a copy of so much of the said plan as was made by you at that time?

Ans. I have.

Cross-int. 17. Will you please produce it after the adjournment?

Ans. I will.

At ½ past 1 p. m. the hearing was adjourned till 15 minutes past 2 p. m., at the same place.

2.15 P. M., APRIL 30, 1868.

The hearing was resumed pursuant to adjournment, the respective parties being represented by the same counsel as at the previous hearings.

(The plan called for by cross-interrogatory 17 was produced by the witness, which he handed to Mr. Lathrop, saying:) This plan is my private property as well as my note-books.

Cross-int. 18. Will you please make a copy of the plan, at my expense, and produce it for use at the trial?

(The paper here called for was produced by the witness, and has been marked by the magistrate, "Exhibit 4, R. Buchanan, C. F. Walcott.")

Ans. Yes, I will. The plan which I have here produced is called the plot, and is, in fact, the original from which some of the sections in Exhibit 2 were made.

Cross-int. 19. This plan, which you produce and say is your private property, is the original from which the copy was made, which you testified about in the district court, is it not?

230 Ans. It is.

Cross-int. 20. You testified in the district court, did you not, that the plan then handed to or produced by you was a correct plan of the dock?

Ans. I don't remember the testimony I gave before the district court; but, if I did say so, I meant it.

Cross-int. 21. It was produced by you, or testified to by you, as a correct plan, was it not?

Ans. It was. [I might say here, in explanation, or further, that engineers make plans from exact measurements of the localities where their surveys are to be made, and those points which are not so important are located approximately; and further, the accuracy of a survey is often dependent upon the value of the land surveyed, or the importance of the survey.]

(Part of answer in brackets objected to by Mr. Lathrop as not responsive, and as immaterial.)

Cross-int. 22. The copy of the plan which you testified about in the district court was made on the paper now shown you, marked Exhibit 2, was it not?

Ans. It was.

Cross-int. 23. (De bene.) At the time of the trial in the district court, was the profile of the line at the bottom of the dock by the westerly wharf the same as it now appears on said Exhibit 2, in section on line C D?

Ans. It is not.

(The witness began to speak further, but Mr. Lathrop stated that he would put questions.)

Cross-int. 24. (De bene.) At that time, the plan corresponded, in respect to this section on line C D, to the section as shown in your original plan, did it not?

Ans. It did.

Cross-int. 25. (De bene.) When was the change made in said Exhibit 2?

Ans. Yesterday morning.

Cross-int. 26. (De bene.) At whose request was this change made?

Ans. I don't think it was made at the request of any person; I don't remember that there was any request made to change the plan,
231 but I was requested to take soundings in certain portions of the profile, which resulted in the profile as now given in the line C D, where the change in the profile was made. I took no soundings at any other time, except yesterday morning, which is shown by my notebook, and also by paper Exhibit 3. The portion of the profile shown in the district court, where the change has been made, was drawn only approximately, for the reason which I gave in my statement, a few answers back.

Cross-int. 27. Will you please draw on said Exhibit 2 a line in red ink showing where the line of the profile was on said section on line C D, at the time of the trial in the district court?

Ans. Since I have now given an accurate profile, I don't care to give one which is not correct.

Cross-int. 28. Before the plan Exhibit 2 was changed by you yesterday morning, 6 feet and $\frac{5}{10}$ was marked on said plan as the depth at mean low water at the point 50 feet from the head of the dock on the westerly side, was it not?

Ans. I believe it was; I have it 6 feet and 5 inches in my copy; I do not remember exactly the figures.

Cross-int. 29. And before the said Exhibit 2 was changed by you, as above, the depth of mean low water at the point marked on said plan at 100 feet from the head of said dock was marked as 11 feet, was it not?

Ans. I believe it was.

Cross-int. 30. Which do I understand you to say was the nearest actual measurement to the head of the dock you made prior to the trial of this case in the district court, in the dock by the westerly wharf?

Ans. I made one at 125 feet; that was the nearest to the head.

Cross-int. 31. And at what points did you make actual measurements yesterday, in said dock by the westerly wharf?

Ans. 50 feet from the head of the dock; none nearer than that; 75; 100; and 125.

Cross-int. 32. Were these measurements made in the keel track, on the line C D?

Ans. They were.

Cross-int. 33. (De bene.) Now state what actual depth you found at each of these points, what grade depth, and what mean low-water depth?

232 Ans. At 50 feet, depth 1½ feet, observed depth; grade height, 4 and $\frac{7}{10}$; $\frac{3}{10}$ at mean low water; all these are below mean low water. At 75 feet, 1 and $\frac{6}{10}$ sounding; 4 and $\frac{6}{10}$ grade height; $\frac{4}{10}$ mean low water; all below mean low water; the mud in all these places is below mean low water. At 110 feet, 3 and $\frac{3}{10}$ feet; 2 and $\frac{9}{10}$ grade height, 2 and $\frac{1}{10}$ sounding; below mean low water. At 125 feet, 12 feet, sounding; grade height, minus 5 and $\frac{8}{10}$, 10 and $\frac{8}{10}$ below mean low water.

(Mr. Lathrop objects to any and all measurements by this witness, and shown on said Exhibit 2, except those made near the time when the "Bowdoin" was injured, on the ground that the condition of the dock at the present time is immaterial.)

Cross-int. 34. (De bene.) On said Exhibit 2, you say the profiles on the longitudinal sections, and on the cross sections, show the form of the bottom of the dock; please state how you made these profiles from your soundings.

Ans. The soundings were reduced to grade heights, and, as such, plotted on the profiles.

Cross-int. 35. (De bene.) Does the depth then on these longitudinal sections and cross-sections show only the grade heights?

Ans. The question conveys no meaning to me.

Cross-int. 36. (De bene.) On the longitudinal section, and on the cross-section E F, you have a line marked as mean low water; have you anything marked as grade height on said plan?

Ans. There is not.

Cross-int. 37. (De bene.) Now, in plotting the profiles, did you plot them from grade height, as you stated a short time since, or did you plot them from mean low water?

Ans. I plotted them from grade height.

Cross-int. 38. (De bene.) On the longitudinal sections, and cross sections, you measured at certain points, as you have stated; so far as the profiles of the bottom between these points are shown in your Exhibit 2, they are drawn from approximate and not actual measurements, are they not?

Ans. It is approximate between the points; I can refer to my statement, a few answers back, that the more accurate the profile is required to be, the oftener soundings are taken.

233 Cross-int. 39. (De bene.) In making the soundings in November, 1866, with what did you make them?

Ans. Part of the time with a plumb-line; some were made with a plumb-line, and a few with a pole.

Cross-int. 40. (De bene.) Did you measure to the surface of the mud, or as far as the plumb-line would go?

Ans. I measured until the plumb rested on the bottom.

Cross-int. 41. (De bene.) How was it in measuring with the pole?

Ans. I measured until I came to the surface of the mud.

Cross-int. 42. (De bene.) With what did you measure in that dock, since the measurements made in November, 1866?

Ans. Plumb-line.

Cross-int. 43. (De bene.) When was the mark made on said Exhibit 2, which shows that the jog is further from the head of the dock than the original plan shows?

Ans. When I drew the red line, representing the cross section at that point.

Cross-int. 44. (De bene.) When was that?

Ans. April 27th, 1868.

Cross-int. 45. (De bene.) How many holes did you dig through the coal yesterday, and how far from the wall was each hole?

Ans. 4 were dug; one was a little over 2 feet from the wall; one was between 3 and 4 feet; one about 5 feet; the other one, also 5 feet.

Cross-int. 46. (De bene.) 5 feet from the wall was then the furthest point from the wall at which you dug, was it?

Ans. It was; about 5 feet.

Cross-int. 47. (De bene.) How large and how deep was each of these holes?

Ans. The first one I mentioned was about a third of a foot deep, about a foot and a half in diameter, the size of a hole made by a coal shovel: the next hole mentioned was 1 foot in depth; the third one, 1 foot and a half; the fourth one, about a third of a foot; the sizes were all about the same.

Cross-int. 48. (De bene.) How did you make the contents of the pile of coal to be 191 cubic feet?

Ans. I took the extreme length, 27 feet; the width, 8½ feet; and the depth, 10 inches. These measurements I took to give rather
234 more than an average; the length being taken in the extreme; the width greater than an average of the three widths I measured, and the depth greater than the average of the four holes. I took the measurements large to be sure that I did not underestimate the quantity.

Cross-int. 49. (De bene.) You spoke of running an oar into the mud in the keel track opposite the pile of coal; how deep did you run the oar into the mud?

Ans. As far as it would go.

Cross-int. 50. (De bene.) How deep was that?

Ans. I did not measure it.

Cross-int. 51. (De bene.) Can you give any estimate as to the said depth?

Ans. It might have been a foot, or a foot and a half.

Cross-int. 52. (De bene.) Did you run it in in more than one place?

Ans. Several places were tried; I tried it, and other persons also.

Cross-int. 53. (De bene.) What were you in at the time?

Ans. In a boat.

Cross-int. 54. (De bene.) How much water was there in the keel track, at that time, at the places where this oar was thrust in?

Ans. About 2 or 3 feet; I did not sound the water at those points.

Cross-int. 55. (De bene.) The keel of the boat was in the keel track at the time, was it not?

Ans. I do not remember that the boat was exactly parallel to the keel track; a portion of the boat might also have been aground.

Cross-int. 56. (De bene.) Did you personally thrust the oar into the keel track more than once?

Ans. I don't remember whether I did or whether I did not.

Cross-int. 57. (De bene.) Can you swear, as a matter of distinct recollection, that this place, where you personally thrust the oar in, was directly in the keel track?

Ans. It was so long ago I don't remember: [but, being low water, and looking particularly for the keel track, I am of the opinion that it could not have been very far from the centre of the keel track.] (Part in brackets objected to by Mr. Lathrop as irresponsive and immaterial.)

Cross-int. 58. (De bene.) Have you a distinct recollection what distance above the jog was the place where you thrust the oar in?

Ans. It was about the middle of the pile of coal; [and I saw
235 oars thrust into the mud in various points, in and out of the keel track, in the vicinity of the pile of coal.] (Part in brackets objected to by Mr. Lathrop, as in last answer.)

Cross-int. 59. (De bene.) Is your recollection that the place was about the middle of the pile of coal distinct?

Ans. It is not. I said it was about the middle; I don't remember distinctly.

Additional interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 50. Do you remember whether, at the time you examined the keel track, the bottom of it was visible before the mud was stirred up by the oar?

(Objected to as immaterial.)

Ans. It was.

Int. 51. You have stated that the actual sounding on line C D, made in November, 1866, was 125 feet from the head of the dock; what other soundings were then made on that line?

Ans. One at 150; one at 175; one at 250.

Int. 52. You have, in your measurements yesterday, made one at 125 feet from the head of the dock; how do the two compare?

(Objected to as immaterial.)

Ans. I find about a foot difference between them.

Int. 53. Which of the cross sections, if any, on the plan, Exhibit 2, are made from soundings taken in November, 1866?

Ans. Cross section on the line E F.

Int. 54. The cross sections P Q, N O, and L M, show a depression about ¾ of an inch from the easterly side, with a rise immediately outside of it. I wish you to state all of the soundings upon which you relied in plotting that elevation and depression; and also any other means you had of knowing that they are correctly plotted.

(Objected to as leading, suggesting facts not proved, incompetent, and immaterial.)

Ans. They were plotted from the soundings taken in cross sections, and also from the profile A B; that is all. At low water the keel track is visible; both keel tracks are visible, with the ridge between them, and also the rapid descent in the southwesterly keel track.

236 (Mr. Dodge, pointing out the place on the plan to which his question referred, the witness said:) They were plotted from the soundings taken in cross sections, and also from the profile A B.

Additional cross-interrogatory by Mr. Lathrop, and answer of the witness thereto.

Cross-int. 60. (De bene.) You say you found a difference of 1 foot between your measurements at 125 feet on the westerly wharf from the head of the dock, made in 1866, and in 1868; which way was the difference?

Ans. It was not so deep in the one taken in 1868; the difference was less than a foot.

ROBERDEAU BUCHANAN.

ROBERDEAU BUCHANAN, recalled by Mr. Dodge, May 7, 1868, before C. F. Walcott, notary public, and examination resumed.

Further interrogatories by Mr. Dodge, in behalf of respondents and appellants, and answers of the witness thereto.

Int. 55. Look at the section line A B on the plan (Exhibit 2) and say what changes, if any, have been made in that line since said exhibit was produced in the district court?

Ans. One change was made—only one—and that was, making the upper end of the keel track less abrupt than then shown on the plan: that is, a point from 17 to 22 feet from the upper end of the dock was made less inclined.

Int. 56. Why was this change made?

Ans. Because I thought it more nearly conformed to the surface of the mud.

Mr. Lathrop, for libellants, was present, but did not cross-examine.

ROBERDEAU BUCHANAN.

237 EXHIBIT 3—R. BUCHANAN, C. F. WALCOTT.

	Sta. W. side of dock.	Bottom below water.	Gr. Ht. bottom.	Plan.
	end + 65			
	+ 50	13.1	— 9.8	
		Water G. H. 3.30		
	2.			
	+ 75	13.2	— 9.9	
	+ 50	12.0	— 8.7	
Middle of ship				
8.1	+ 25	10.0	6.7	
Gr. Ht.—4.8				
	1			
	0			

60

238 Deposition of EBENEZER DAVIS, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 2, 1868.

Interrogatories by John C. Dodge, esq., for respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, and whether or not you have already given a deposition in this case.

Ans. My name is Ebenezer Davis; I have.

Int. 2. When there is a jog in a wharf five feet deep, is it negligent or careful seamanship to lay a loaded vessel one hundred and five feet long with her stern extending twenty-five feet below the jog and the rest of her above it, supposing the master to know nothing of the depth of water above or below?

(Objected to as leading, incompetent, and immaterial.)

Ans. I should call it negligent, sir.

Int. 3. What, if anything, do these jogs ordinarily indicate in relation to the berths at the wharf?

(Objected to as last.)

Ans. Well, I think they would indicate, sir, that there would be distinct berths; that would be the indication to my mind, not knowing any other reason for the jog.

Int. 4. Is it careful or negligent management to lay a loaded vessel with her bow close to the wharf and her stern off from it from five to ten feet?

(Objected to as last.)

Ans. I should say, sir, that that was negligent; perhaps I ought to qualify that a little, I should say it was negligent unless there was some good reason why she had to lie so.

Int. 5. Suppose a vessel placed, as stated in the last question, against a wharf ten feet high, with a slant outward of two feet from top to bottom, how would she probably heel when she grounded?

(Objected to as last.)

239 Ans. If she was against the wharf, if the pile was slanting in that way, it would have a tendency to throw her off; her keel would take the bed before she bore very hard on her floor, so that the pile would have a tendency to throw her off.

Int. 6. Suppose it were proved to you that the "Bowdoin," when loaded, was placed with her bow close to the wharf and her stern off from five to ten feet, should you or not then think that the pile of coal had caused her damage?

(Objected to as last.)

Ans. I should not think so.

Int. 7. When you saw the "Bowdoin" in the dry-dock, after her accident, and made your examination of her, was there or not any break or abrasion in her outer planking on her starboard side?

(Objected to as last.)

Ans. I saw none, sir.

Int. 8. On what day, and at what time of day, did you first see the "Bowdoin," and was she or not then unloaded?

(Objected to as last, and also because the subject has been fully gone into in the previous deposition of witness.)

Ans. I do not recollect on what day it was, now; I know it was in the afternoon, I think from two to three o'clock; and I think that the cargo was nearly or quite all discharged.

Int. 9. State whether or not you supposed her to be then in any peril.

(Objected to as last.)

Ans. I did not, sir, at that time.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Cross-examination de bene.)

Cross-int. 1. Have you had any conversation or conversations with Mr. Oakman about the subject-matter of your evidence this morning?

Ans. Yes, sir.

Cross-int. 2. When first, and where?

Ans. Yesterday afternoon, at my office.

240 Cross-int. 3. Had you, previous to his calling on you at your office, expressed to any one the opinions which you have given this morning?

Ans. No, sir.

Cross-int. 4. You knew, on the day you first saw the "Bowdoin," that

she had lain with her stern by the jog, at the time she was injured, did you not?

Ans. No, sir.

Cross-int. 5. You were told of this on that day or soon afterwards, were you not?

Ans. I don't recollect, sir, as anything was ever said to me about the jog.

Cross-int. 6. Was not the mark on the cap-sill pointed out to you, opposite to which the vessel's stern had lain?

Ans. Yes, sir; afterwards it was.

Cross-int. 7. When afterwards?

Ans. I couldn't say when—how long afterwards; it was when I went there afterwards with Captain Pierce—I think it was he or Captain Paine called my attention to the mark; I think it was Captain Pierce.

Cross-int. 8. Was it not soon after the vessel was injured—within a week or two?

Ans. Yes, it was as soon as that, sir; she was not in her berth at the time; she had been hauled away.

Cross-int. 9. At this time, did you take notice of the jog?

Ans. I did not.

Cross-int. 10. Why is it not careful seamanship to lay a vessel with her stern twenty-five feet by a jog.

Ans. Because I should expect uneven bottom.

Cross-int. 11. Why should you expect uneven bottom?

Ans. Because the keel line or bed of the upper berth would not correspond with that of the lower.

Cross-int. 12. If a vessel took ground between the regular keel track and the wharf, with her side resting against such a slanting pile as has been described, would not the slanting pile have a tendency to force the keel into the keel track when the tide fell?

Ans. I suppose it would have a tendency to so force her, somewhat; but it would also have a tendency to list her off; but the question
241 put to me, on my direct examination was, that her bow was close to the wharf, and her stern five or ten feet off.

Cross-int. 13. Did Mr. Oakman describe to you, yesterday, how her bow and stern were?

Ans. Yes, sir.

Cross-int. 14. How did he describe that her bow and stern were, in regard to the wharf?

Ans. He described it very much as it has been described to be by Mr. Dodge, in his interrogatory above. Mr. Oakman drew a diagram, showing that she did not lay parallel with the cap-sill of the wharf, but angling, which would bring her across the bed.

Cross-int. 15. Have you got that diagram?

Ans. No, sir; it was a little scrap of paper.

Cross-int. 16. In that diagram, how far abaft of the cathead on the starboard side did Mr. Oakman represent the bow of the "Bowdoin" as first touching the wharf?

Ans. He didn't represent it at all, sir.

Cross-int. 17. Didn't represent what at all?

Ans. How far abaft the cathead she took the spile; or at least he didn't call my attention to it.

Cross-int. 18. Did he draw the wharf and the vessel?

Ans. The line of the cap-sill and the vessel.

Cross-int. 19. What part of the bow did he represent as touching the wharf?

Ans. Well, I should think on the rough sketch he gave me, it was somewhere about the fore chains. He gave me his idea in a very rough pencil sketch.

Cross-int. 20. What part of the bow did you understand from Mr. Dodge's question first touched the wharf?

Ans. Well, I understood about that point, her fore chains.

Cross-int. 21. How far forward would this be from the place where the bow begins to slope?

Ans. Well, it would be pretty near where the bow begins to slope; the after part of the fore chains would be near the place where the bow begins to slope, but the vessel would be as wide there in her wale as anywhere. If she had a chain wale, that would take the spile first.

Cross-int. 22. At the time you examined the vessel in the dry-
242 dock, did you look particularly to see whether her planks on the starboard side were abraded?

Ans. No, sir.

Cross-int. 23. How long is it since you have been to sea?

Ans. Twenty six years, I think, sir—twenty-five or six years; no, sir; it is not quite so long; it is twenty-three or four years.

Cross-int. 24. Did Mr. Oakman tell you yesterday that there is always a descent, more or less abrupt, from one berth to another, at a jog in a wharf?

Ans. No, sir.

Cross-int. 25. Did he say anything about the difference of levels in two berths at a jog?

Ans. I think he did; I think he said the lower berth was a deep-water berth, where vessels lay afloat most of the time.

Cross-int. 26. Did he speak of there being a descent from the upper to the lower berth, at the jog in his wharf, where the "Bowdoin" lay when she was injured?

Ans. I think he only said that, sir, which I have just said.

EBENEZER DAVIS.

Deposition of WILLIAM BRAY, a witness for respondents and appellants, taken May 2, 1868, before Charles F. Walcott, notary public.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, age, residence, and business.

Ans. William Bray; residence, Charlestown; engineer; I am twenty-eight years of age.

Int. 2. How long have you been an engineer; what kind of engineering do you do, and where are you now employed?

Ans. I have been an engineer somewhere about three years; I run a stationary engine; I am now employed by Samuel O. Little, corner of Charles and Cambridge streets, Boston.

243 Int. 3. Where were you employed, and what doing, in the fall of 1866?

Ans. Working for Mr. Oakman—hoisting—running a portable engine. I don't know as you would exactly call the one I was running then a portable engine; I suppose they would call it a stationary one. It was a double horizontal engine. The other single upright engines are usually called portable.

Int. 4. Do you remember the schooner "Bowdoin" being at Messrs. Oakman & Eldridge's wharf in October and November, 1866?

Ans. Yes, sir.

Int. 5. Where did she lie before she hauled inside the dock?

Ans. Lay at the end of the wharf, outside of two other schooners.

Int. 6. Do you remember how long she was there?

Ans. No, sir; I do not exactly. Three or four days, as near as I could judge; I don't know the exact time. In fact, a number of days.

Int. 7. Do you remember what vessels they were that lay inside of her at the end of the wharf?

Ans. I don't know what their names were.

Int. 8. Who was in charge of the "Bowdoin" while she lay there, if you know?

(Objected to as incompetent and immaterial.)

Ans. Well, the one I saw have charge of her at the time I thought was the captain, but afterwards he turned out to be the mate.

Int. 9. What made you think he was the captain?

(Objected to, as last.)

Ans. Because he was the only one aboard that seemed to have charge of the vessel, and he seemed to have a good deal to say; and I therefore concluded that he was the captain.

Int. 10. What, if anything, did you hear him say in regard to the vessel being delayed in unloading?

(Objected to as immaterial.)

Ans. When my attention was first called to that vessel, the mate (as he turned out to be) was having a dispute with the foreman of the wharf in regard to the vessel lying next to the end of the wharf hauling in before him. The mate told the foreman of the wharf that if he hauled that vessel in before his, there would be trouble about it.
244 The foreman replied to him that he should allow that vessel to haul in, for it was her turn. That's all I have on that.

(Answer objected to by Mr. Lathrop as incompetent and immaterial.)

Int. 11. When did you first see the man who afterwards proved to be the captain of the "Bowdoin?"

Ans. Monday morning.

Int. 12. How was the "Bowdoin" then lying?

(Objected to as immaterial.)

Ans. She was lying some ways from her berth.

Int. 13. State a little more fully, if you can, how far from her berth; and how as to being parallel with the wharf.

(Objected to as immaterial.)

Ans. I didn't measure it. I couldn't say exactly how far she was from her berth. As near as I could judge, she was somewheres from twenty to twenty-five feet. She wasn't parallel with the wharf. Her bow was close into the wharf, and her stern lay some ways from the wharf.

Int. 14. Did you that morning hear her captain give any reason why he had not hauled to his berth? If you did, with whom was he talking, and what was said?

Ans. I went aboard the vessel with the chief engineer, Mr. Swann. Mr. Swann asked the captain why he didn't haul his vessel ahead into her berth, so that they could go to work. The captain made answer that he wasn't going to haul his vessel any further ahead to break her jib-boom.

Cross-interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto. (Cross-examination de bene.)

Cross-int. 1. Where, on the Monday morning that the "Bowdoin" was injured, was the engine that you were running stationed?

Ans. Stationed on the west wharf.

Cross-int. 2. On what part of the west wharf?

Ans. The lower end of the wharf.

245 Cross-int. 3. How far from the end, and how long had it been there?

Ans. As near as I could judge fifty or sixty feet from the end of the wharf; I never measured it; I couldn't tell how long it had been there.

Cross-int. 4. Where was the other engine?

Ans. She was further up the same wharf—the west wharf.

Cross-int. 5. Do you remember where on the west wharf it was?

Ans. Well, the one that I ran was below the buildings; there were buildings between that engine and mine; she was placed for unloading a vessel at the upper berth, and mine for the lower one.

Cross-int. 6. Was this engine for working at the upper berth a single or a double engine, upright or horizontal?

Ans. Single engine, upright.

Cross-int. 7. How long had that engine been at that place?

Ans. It had taken out two or three cargoes there at that time; she had worked at that berth a number of times during that year.

Cross-int. 8. It was moved then from place to place as occasion required, was it not?

Ans. Yes, sir.

Cross-int. 9. When you say the vessel lay twenty or twenty-five feet from her berth, you mean that she was that distance astern of her berth, do you not?

Ans. Yes, sir.

Cross-int. 10. What time was it on Monday morning that you went on board the "Bowdoin" with Mr. Swann?

Ans. Somewheres between six and seven o'clock.

Cross-int. 11. The conversation which you mention Mr. Swann had with the captain was at this time, was it not?

Ans. Yes, sir.

Cross-int. 12. This was the time when the captain was first informed that his vessel had been injured, was it not?

Ans. It was, to my knowledge, as far as I know about it.

Cross-int. 13. Mr. Swann, at that time, told him his vessel was injured, did he not?

Ans. He told him it would be, if he didn't haul her ahead.

Cross-int. 14. Was not the vessel then injured?

246 Ans. I didn't examine her.

Cross-int. 15. How did you happen to go aboard with Swann?

Ans. Standing alongside of him, and I noticed she was not ahead far enough to work; we went 'round and went aboard of her.

Cross-int. 16. What was the first thing Swann said to the captain, at that time, after going aboard?

Ans. I don't know as I can remember the exact words he called to him when he went to the cabin; but the first words he said to him after he came on deck were, he asked him why he did not haul her ahead into her berth, so that they could work.

Cross-int. 17. Did Swann go into the cabin, and leave you on deck?

Ans. No, sir; he went to the companion-way; not to my knowledge he didn't, not while I was aboard. I couldn't say but what Swann was aboard half a dozen times during the day; I know nothing of what transpired after that morning.

Cross-int. 18. Was not the vessel aground when you went aboard in the morning?

Ans. Well, I couldn't say whether she was or not.

Additional direct interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 15. You say you went 'round to go on board; 'round where do you mean?

Ans. I went 'round from the west wharf to the east wharf, where the vessel lay.

Int. 16. Do you remember at which end of the "Bowdoin" you got on board of her?

Ans. At the bow—forward of the fore-rigging, I think.

Int. 17. How do you remember this?

(Objected to for form.)

Ans. I walked down on the wharf, as far as the stern of the vessel; but we found that we could not get aboard there, and had to walk forward to get on board.

247 Further cross-interrogatories by Mr. Lathrop, and answers of the witness thereto.

Cross-int. 19. (De bene.) Can you swear, as a matter of distinct recollection, whether you got on board forward, or aft of the fore-rigging?

Ans. I am pretty positive it was forward of the fore-rigging.

Cross-int. 20. (De bene.) Can you swear, as a matter of distinct recollection, that it was forward of the fore-rigging?

Ans. I think I can.

Cross-int. 21. (De bene.) How are you enabled to recollect this fact, when you are not able to recollect whether the vessel was afloat or aground?

Ans. Well, I had more cause to bear that in mind, than I did about the vessel being afloat; for I didn't have any cause to notice that. When I came to walk to the after part of the vessel, I found that I couldn't get aboard there, and had to go to the bow. I did not stop there long; the tide was pretty high. I couldn't say whether she was afloat or not.

Cross-int. 22. (De bene.) Could you not have got aboard aft of the fore-rigging?

Ans. No, sir; I don't think I could.

Cross-int. 23. (De bene.) If the vessel lay with her stern further out than her bow, how did you expect to get aboard at her stern, when you could not get aboard just aft of her fore-rigging?

Ans. I didn't stop to think anything about it, till I got down to her stern. When I got down to her stern, I found she was off too far to get aboard.

Cross-int. 24. (De bene.) Do you mean to say that you did not notice until you got to her stern, that it was so far out that you could not get aboard?

Ans. I do.

WILLIAM BRAY.

248 Deposition of RICHARD BAKER, a witness for respondents and appellants, taken May 2, 1868, before Charles F. Walcott, notary public.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. Richard Baker; Charlestown, Massachusetts; marine inspector.

Int. 2. How long have you been marine inspector, and where?

Ans. About seventeen years; in Boston, since 1850; between seventeen and eighteen years.

Int. 3. What was your business before you were marine inspector?

Ans. I was a shipmaster for twenty-seven years.

Int. 4. Are you acquainted with the wharfs and docks in Boston and vicinity?

Ans. Yes, sir; I think I am; I see them every morning, most.

Int. 5. Are you acquainted with the wharfs and docks in Charlestown occupied by Messrs. Oakman & Eldridge?

Ans. Yes, sir; that is, I see them often.

Int. 6. Do you remember a jog in the wharf on the east side of the dock?

Ans. Yes, sir.

Int. 7. Would it, in your judgment, be careful or negligent seamanship, to lay a loaded vessel one hundred and five feet long, with her stern twenty-five feet below that jog, or any similar jog in a wharf.

(Objected to as incompetent and immaterial.)

Ans. I should think it would be negligent, decidedly.

Int. 8. Which is it, in your judgment, careful or negligent seamanship, to lay a loaded vessel to a wharf, with her bow close to the wharf, and her stern off from it five or ten feet?

(Objected to as last.)

Ans. Negligent, sir.

Int. 9. Suppose a vessel laid to a wharf, as stated in the last
249 question, and the wharf slopes out about one foot in five from top to bottom, what will be likely to happen to the vessel when she grounds?

(Objected to as last.)

Ans. I should say she would strain very much and break her timbers and planking.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Cross-examination de bene.)

Cross-int. 1. You are in the office with Captain Davis, are you not?

Ans. I am, sir.

Cross-int. 2. Were you there yesterday at the time Mr. Oakman called?

Ans. I was.

Cross-int. 3. Was his conversation with you as well as with Captain Davis?

Ans. There was but very little with me.

Cross-int. 4. Did he have first a talk with Captain Davis and then with you?

Ans. Well, he talked with Captain Davis when he first came into the office, and then he passed a few words with me.

Cross-int. 5. Did you hear what he said to Captain Davis?

Ans. I did not, sir; I am hard of hearing; I can't hear any distance.

Cross-int. 6. What conversation did you have with Mr. Oakman?

Ans. He asked me if I would come here this day noon. I believe that was about all.

Cross-int. 7. Was that all he said to you?

Ans. I think it was. There may have some other words passed between us. He's a man that I have known for a long time; that's the amount of what conversation there was.

Cross-int. 8. Was what you have stated all he said yesterday to you about this case?

Ans. I think that was all. He might have said something about his wanting me to testify about his wharf, but I don't recollect his words.

250 Cross-int. 9. Did he say what he wanted you to testify about this wharf?

Ans. He did not.

Cross-int. 10. Did he show you the diagram he showed Captain Davis, representing the position of the vessel at the dock?

Ans. I don't think he did.

Cross-int. 11. Did you see that diagram?

Ans. I think I did, after he went out. He left it on Captain Davis's desk, and I think I looked at it.

Cross-int. 12. After Mr. Oakman went out, did you and Captain Davis talk the matter over?

Ans. We did not.

Cross-int. 13. Have you ever had any conversation with Mr. Oakman about this case, before yesterday?

Ans. Not a word.

Cross-int. 14. When were you last at Oakman & Eldridge's wharf?

Ans. This morning.

Cross-int. 15. When before this morning?

Ans. I don't recollect. I go there when there are any vessels there. It's my business to see what vessels come into port. I generally go there once or twice a week; sometimes oftener.

Cross-int. 16. To what part of the wharf do you go once or twice a week—to the office, or down the wharf?

Ans. Down the wharf. I never go to the office.

Cross-int. 17. How came you to go there this morning?

Ans. There was a brig down there. I wanted to know who she was.

Cross-int. 18. At what part of the wharf did the brig lie?

Ans. At the end of the east wharf.

Cross-int. 19. Why do you think it is negligent to lay a vessel with her stern twenty-five feet by the jog in Oakman & Eldridge's easterly wharf?

Ans. Why, it's a very improper position to lay a vessel.

Cross-int. 20. Is there anything peculiar in that wharf and dock which makes it more improper than at any other wharf with a jog in it.

Ans. I don't know that there is.

251 Cross-int. 21. Now, why do you think it is improper to lay a vessel with her stern twenty-five feet below a jog in the wharf?

Ans. Well, I think a vessel at the head of those docks—the head of the docks are dry at low water, and sometimes before low-water—her bow would be aground, and her stern would be afloat probably; she would stand very much in a slanting position; I don't know how deep the water is at this jog, but it slants off very much to the deep water berth. I saw the bad policy of laying a vessel at a jog a short time ago; I don't recollect her name; she was lying at the navy yard wharf; the water ran in at her cabin windows, and filled her.

Cross-int. 22. Is the reason you think it is negligent to lay a vessel with her stern twenty-five feet by the jog at Oakman & Eldridge's wharf, because of the descent you have mentioned between the upper and lower berths?

Ans. No, I don't know that that is the exact reason, because I don't know anything about the bottom there—how much the descent is.

Cross-int. 23. A case was put to you of a vessel lying with her bow close to the wharf, and her stern off five to ten feet; what part of the bow did you suppose first touched the wharf?

Ans. Well, that would depend upon whether this vessel was heeled over, or whether she was upright.

Cross-int. 24. The following question was put to you by Mr. Dodge: "Is it, in your judgment, careful or negligent seamanship, to lay a loaded vessel to a wharf, with her bow close to the wharf, and her stern off from it five or ten feet?" In giving your answer, where did you assume that her bow first touched the wharf?

Ans. Well, I couldn't tell whether it was at the very top side of her, or down by the bilge. If she was upright, she would take the wharf first by her wales; if she was heeled over, her top would take first.

Cross-int. 25. I mean, what part of the bow, from the stem to the side of the vessel, did you assume first touched the wharf?

Ans. Well, the round of the bow.

Cross-int. 26. How far aft the cathead did you suppose this place where her bow first touched was?

Ans. Well, perhaps four or five feet.

RICHARD BAKER.

252 Deposition of NATHAN C. MULLIKEN, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 4, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name; and whether or not you have already given a deposition in this case?

Ans. Nathan C. Mulliken; I have.

Int. 2. State how the "Bowdoin" lay on that Monday when you first saw her, as to being parallel with the wharf or not.

(Objected to as incompetent and immaterial.)

Ans. She was not parallel with the wharf; her stern was further off than her bow was.

Int. 3. How much further off was that part of her that lay opposite the jog than the part of her bow that was nearest to the wharf?

(Objected to as above.)

Ans. I should call it five feet; I should think there was five feet difference; I mean at the jog; she was five feet further from the wharf at the jog than she was at the bow.

Int. 4. Do you mean five feet further before or after passing the jog, as you went from the bow towards the stern?

(Objected to as above.)

Ans. I call it from the jog, not beyond; I mean before I passed it, certainly.

Int. 5. Was it, in your opinion, careful or negligent management, in the person or persons in charge of the "Bowdoin," to lay her at the wharf as the "Bowdoin" was lain, and allow her to ground in that position.

(Objected to for form, as assuming a fact not yet put in evidence, and as above.)

Ans. I should call it negligence.

253 Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (All cross interrogatories put de bene.)

Cross-int. 1. Do you know anything about how she was hauled in, and lain at the wharf, except what you saw of her Monday morning?

Ans. I know nothing, only from what would be natural consequences. That is all.

Cross-int. 2. Did you see her before Monday morning, at that wharf?

Ans. I did not.

Cross-int. 3. How far, in your judgment, was the part of the keel at the bow from the wharf?

Ans. I couldn't tell anything about it; it would be a mere matter of guess-work.

Cross-int. 4. What part of her bow do you refer to as being nearer the wharf than her stern?

Ans. Her rail; right over the bluff of the bow.

Cross-int. 5. What do you mean by the bluff of the bow?

Ans. What I term bluff is the broadest part of the bow of a vessel; perhaps a few feet aft of the cathead.

Cross-int. 6. By bluff of the bow do you mean where the bow and side come together?

Ans. I have already stated; what I call the bluff is the broadest part of the vessel forward. I am not a ship-carpenter or sailor, and don't know much about maritime terms.

Cross-int. 7. Do you mean by bluff where the side of the vessel begins to narrow towards the forward part of the vessel?

(Objected to as indefinite.)

Ans. I can't answer the question any different from what I have done.

Cross-int. 8. Can't you answer a question Yes or No?

Ans. I can if I understand the question.

Cross-int. 9. Speaking of the "Bowdoin," do you mean by the bluff of her bow where her sides first begin to approach each other towards the bow?

254 Ans. I don't understand what he means by that question.

Cross-int. 10. You know what the sides of a vessel are, do you not?

Ans. I should call the side of a vessel all the outside from stem to stern.

Cross-int. 11. These sides narrow, do they not, as they approach the bow?

(Objected to as indefinite.)

Ans. I don't understand about the sides narrowing; I understand the deck of a vessel narrows, but I don't understand the sides narrow.

Cross-int. 12. In the "Bowdoin," do you mean by the bluff the part where the deck begins to narrow towards the bow?

Ans. I do.

N. C. MULLIKEN.

Deposition of JOSEPH BURNETT, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 4, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, and whether or not you have already given a deposition in this case.

Ans. My name is Joseph Burnett. I have given a deposition before.

Int. 2. State how the "Bowdoin" lay on the Monday morning when you first saw her, as to being parallel to the wharf or not.

(Objected to as incompetent and immaterial.)

Ans. She lay listed off, with her stern considerably further out than her bow.

Int. 3. How much farther off was the part of her that was opposite the outer corner of the jog than that part of her that was nearest to the wharf?

(Objected to as above.)

255 Ans. A man could step on forward, and he couldn't jump on aft; I should say probably eight or nine feet.

Int. 4. In your opinion, was it careful or negligent management in the persons in charge of the "Bowdoin" to lay her with her stern extending beyond the jog as she did, and allow her to ground, loaded?

(Objected to as above.)

Ans. I should think it was very careless in somebody to leave a vessel in the position she was in Monday morning; I mean careless in the captain or mate.

Int. 5. In your opinion, was it careful or negligent management in the persons in charge of her to lay her with her stern off from the wharf and her bow nearer to it, as you have stated, and allow her to ground, loaded?

(Objected to as above.)

Ans. I should consider it very careless.

Int. 6. Suppose a vessel brought to a wharf and laid parallel to it, and properly made fast; could she or not get into the position with her stern off and her bow on, as you saw the "Bowdoin" on Monday morning?

(Objected to as above.)

Ans. A vessel properly made fast couldn't get that way.

Cross-interrogatories (all put de bene) by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. How far was the forward part of the keel of the "Bowdoin" from the foot of the wall of the wharf?

(Objected to as not giving the witness the necessary elements to understand the question.)

Ans. I couldn't tell without I knew the width of the vessel forward.

Cross-int. 2. Was it off the width of the vessel?

Ans. No.

Cross-int. 3. How much less than the width?

Ans. Two foot and a half; more than one-half.

Cross-int. 4. Did you see the forward part of the keel that Monday morning?

256 Ans. I saw the distance where it was from the wharf.

Cross-int. 5. You have estimated the distance of the rail opposite the jog from the wharf; can you not estimate the distance of the forward part of the keel from the wharf?

(Objected to as having been already answered.)

Ans. There hasn't been any question put to me about the rail that I know of.

Cross-int. 6. What part of the vessel did you have reference to when you said the part opposite the jog was eight or nine feet further from the wharf than the part of her nearest the wharf?

Ans. I meant her stern quarter, next the wharf?

Cross-int. 7. What part of her stern quarter?

Ans. The part opposite the jog.

Cross-int. 8. What part, in reference to her rail, from the rail downwards?

Ans. The part opposite the jog.

Cross-int. 9. How far, in your judgment, was the part of the vessel opposite the jog from the cap-sill of the wharf?

Ans. It might be eleven feet, and it might not be quite so much.

Cross-int. 10. On Monday morning, when you saw the vessel, was her rail opposite the jog above or below the level of the cap-sill?

Ans. That I couldn't say.

Cross-int. 11. Can you form any judgment at what distance the stern part of the vessel was from the wall below the jog, opposite the stern-post?

Ans. I could give a pretty good guess at it; it was one-half of the width of the vessel and somewhere from nine to thirteen feet more.

Cross-int. 12. Did you take any notice, that Monday morning, as to the distance of the stern-post from the wall?

Ans. Not particular.

Cross-int. 13. How far was the forward part of the vessel from the wall? I mean the part nearest to the wall.

Ans. Not over two and a half feet.

Cross-int. 14. What part was this?

Ans. Forward of the fore-rigging.

257 Additional direct interrogatories by Mr. Dodge, and answers of the witness thereto.

Int. 7. When you speak of the distance from the wall below the jog to the vessel, how many rows of piles, if any, did you allow for outside of the wall?

(Objected to as incompetent and immaterial.)

Ans. Between two and three.

Int. 8. How deep do you suppose the jog to be?

(Objected to as last.)

Ans. Four feet.

Int. 9. How far do you think the vessel was from the outside of the piling, at the point just below the jog; I mean the part of the vessel nearest to the wharf?

(Objected to as immaterial.)

Ans. Between ten and eleven feet.

Int. 10. Please explain how you reconcile your last answer with your answer to the ninth cross-interrogatory.

Ans. At the time I answered that, I think I said it was eight or nine feet from the wharf to the highest part of her quarter rail; I forget just how the question was put.

(Before the tenth interrogatory was put to the witness, the magistrate read to the witness the ninth cross-interrogatory, and his answer thereto.

The witness here stated that he had not given the distance named in the answer to the ninth direct interrogatory as large as he meant to, saying—"I meant to add the width of the jog to that distance, but, when I answered, forgot to do so.")

Cross-interrogatory by John Lathrop, esq., for libellants and appellees, and answer of the witness thereto.

Cross-int. 15. (De bene.) You meant to add the depth of the jog to the eight or nine feet you mentioned just above, did you?

Ans. Yes, sir.

(The witness then stated: "I have been asked three questions, how far the stern was further than the bow from the wharf; I an-
258 swered to that, between eight and nine feet; then I was asked how far the stern was from the wharf at the jog; I answered to that, I think, between ten and eleven feet; then, to the last question, you would have to add the width of that jog—four feet—which would give the whole of the questions right.")

JOSEPH BURNETT.

Deposition of EDWARD KNIGHT, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 4, 1868.

Interrogatories by John Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. State your name, residence, and business.

Ans. Edward Knight; I live in Charlestown; my business is wood and coal.

Int. 2. Do you keep a wharf; if so, how long have you done so?

Ans. I do; 1851 I went into business, and have been there in business ever since.

Int. 3. Do you know the dock and wharfs occupied by Oakman & Eldridge; if so, how long have you known them?

Ans. I do; I have known them ten years.

Int. 4. State whether or not, in November, 1866, some coal in that dock was pointed out to you.

Ans. It was; yes, sir.

Int. 5. Where were you standing at the time; and at what time of tide was it?

Ans. I was standing on the cap of the wharf, opposite to where the coal then lay in the dock, and it was low water.

Int. 6. How much of the coal was there, as nearly as you can judge?

Ans. From three to five tons.

Int. 7. Was that dock, with that coal in it, safe or was it unsafe
259 for a loaded vessel one hundred and five feet long to lie in, provided she was hauled into either of the berths?

(Objected to as incompetent and immaterial.)

Ans. It was safe, provided she was hauled in.

Cross-interrogatories, put de bene, by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. When, in November, did you see this coal?

Ans. I don't recollect the day; I was called there to look at it; I think it was a Monday, but I couldn't tell the day of the month.

Cross-int. 2. You heard of the accident to the "Bowdoin" in that dock, did you not, when it happened?

Ans. Yes, sir, I did.

Cross-int. 3. How long after the accident was it that you saw the coal?

Ans. Three or four days.

Cross-int. 4. The vessel was found injured on Monday; was the day you saw the coal the next Monday?

Ans. I couldn't state the exact day; I said I thought it was Monday; I couldn't state the exact day of the month.

EDWARD KNIGHT.

Deposition of GARDNER PROUTY, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 4, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. My name is Gardner Prouty; I reside in Littleton, Massachusetts; my business is wharfinger at Damon's wharf, in Charlestown; office 29 India street, in Boston.

260 Int. 2. How long have you been a wharfinger?

Ans. I think it's fifteen years, the 1st of this last April.

Int. 3. What, if anything, does a jog, say four or five feet deep, in a wharf, indicate as to the berths at it?

(Objected to as incompetent and immaterial.)

Ans. It would indicate two berths generally; there is sometimes we lay a vessel into the lower berth, and one into the upper, and let them lap by some; rarely it is the case; a jog not more than five feet, you couldn't let a vessel lap by at all; I should say it indicated the division of two berths, if you had two vessels there. I have in my mind a berth at my wharf where there is a jog considerably over ten feet; there we put in two vessels, and let them lap some.

Int. 4. In your opinion, would it be careful or negligent management in a person in charge of a vessel one hundred and five feet long, to bring her loaded to a wharf, and lay her with her stern twenty-five feet below such a jog as supposed in the last question, and let her ground?

(Objected to as above.)

Ans. I should think it would be careless if a man was doing it on his own responsibility, unless he was told by the wharfinger what the bottom was.

Int. 5. Is it careful or negligent management to lay a loaded vessel with her bow close to a wharf, and her stern from five to ten feet from it, and let her ground in that position?

(Objected to as above.)

Ans. I should say it was careless—negligent—whatever term you have a mind to use.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) Does a jog in a wharf necessarily indicate that a vessel cannot lie in safety unless she lies entirely above or entirely below the jog?

Ans. It does not always; it depends upon a good many circumstances, what the vessel is, and whether she is loaded or not.

Cross-int. 2. (De bene.) Does a jog in a wharf indicate neces-
261 sarily that a loaded vessel cannot take ground in safety unless she lies entirely above or entirely below the jog?

Ans. I don't know how to answer that question; it depends always on the bottom—the ground. Every person that has charge of a wharf is supposed to know the situation of his docks.

Cross-int. 3. (De bene.) Some docks have a gradual decline on the bottom, have they not, opposite a jog?

Ans. They do.

Cross int. 4. (De-bene.) Does a jog in a wharf indicate necessarily that there is one berth above and one berth below the jog?

Ans. It does; it does at my wharf; I don't know the situation of other wharfs as well as I do my own; I know it does at my wharf.

Interrogatory by Mr. Dodge, and answer of the witness thereto.

Int. 6. State whether you know of any case where there are two berths at a wharf separated by a jog; the upper, a berth for vessels to lie aground, and the other for them to lie afloat, in which the decline is uniform from the upper end of the upper berth to the lower end of the lower berth.

(Objected to as incompetent and immaterial.)

Ans. I do not know of any such case.

Further cross-interrogatories by Mr. Lathrop, and answers of witness thereto.

Cross-int. 5. (De bene.) Are there not some wharfs where there is an upper shoal-water berth, and a lower deep-water berth, which have the descent between the two so gradual that a loaded vessel could ground in safety, if her stern projected beyond the jog twenty-five feet?

Ans. I don't know of any such case.

Cross-int. 6. (De bene.) Suppose the descent between the upper and lower berth to commence ten feet above the jog and to end ten feet below, and that there is a difference of level of only three and one-half feet between where the descent begins and where it ends; is this difference sufficient, in your judgment, to injure a loaded vessel?

Ans. If she should ground in the upper berth, and her keelson didn't bear the whole length of it, I should say she was in danger.

262 Cross-int. 7. (De bene.) Suppose there is an upper and a lower berth, each on a gradual incline, and that the difference of level between the upper end of the lower berth and the lower end of the upper berth is three and one-half feet; that this difference is extended over a space of twenty feet, from ten feet above the jog to ten feet below; should you or not be of the opinion that a loaded vessel, lying with her stern twenty-five feet by the jog, would be injured when she took ground?

Ans. I don't really comprehend the question. (On question being repeated, the witness says:) I think my other answer covers that; that she should bear along her whole *kneel*.

Cross-int. 8. (De bene.) Do you think in the case just put the vessel would or would not bear on her whole keel, supposing the bottom to be soft mud.

Ans. That would depend how deep the mud was; I don't know as I could answer it any better.

GARDNER PROUTY.

Deposition of GEORGE B. MURRAY, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 4, 1868.

Interrogatories by John C. Dodge, esq., on behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business; and if you say you are a master mariner, state how long you have been, and how long a mariner.

Ans. George B. Murray; Boston; master mariner; nine years master, and fifteen years mate and mariner; twenty-four years at sea.

Int. 2. In what class of vessels have you sailed, and in what kind of business have you been engaged?

Ans. Most every class—barks and brigs and schooners, as master; coasting and West India trade, as mate and master; as seaman, I have been all over the world.

263 Int. 3. Do you know the dock and wharves at Charlestown, occupied by Oakman & Eldridge; if you do, state what opportunity you have had of knowing them?

Ans. I do, sir; I was wharfinger for nineteen months on Oakman & Eldridge's wharf; that was in 1862 and 1863.

Int. 4. Do you remember a jog in the westerly side of the wharf, on the easterly side of the dock?

Ans. Yes, sir, I do.

Int. 5. In your opinion, which is it, careful or negligent management in the master, to lay a loaded vessel one hundred and five feet long to that wharf, with her stern extending twenty-five feet below that jog, and let her ground in that position?

(Objected to as incompetent and immaterial.)

Ans. I should say it was negligent.

Int. 6. Suppose the captain knew nothing of the depth of the water in the berths, except as indicated by the jog, which would it then be, careful or negligent management, so to lay a vessel and let her ground?

(Objected to as above.

Ans. I should say it would be negligence.

Int. 7. In your opinion, which is it, careful or negligent management, to lay a loaded vessel with her bow close to that wharf, or any other wharf like that, and her stern off from it from five to ten feet, and let her ground in that position?

(Objected to as above.)

Ans. I should say negligence.

Int. 8. Suppose a loaded vessel is laid parallel to that wharf, or any other like it, and is properly made fast there, could she or not get into the position supposed in the last question?

(Objected to as above.)

Ans. Properly made fast, she could not get there without tearing herself to pieces.

Int. 9. With what kind of fenders, if any, are coal vessels ordinarily furnished?

(Objected to as immaterial.)

Ans. Fore-and-aft fenders, and up-and-down fenders, and cork fenders.

264 Int. 10. Which are the proper fenders to be used at that wharf, or any other like it, with spiles in front of the stone wall?

(Objected to as last.)

Ans. Fore-and-aft, and up-and-down.

Int. 11. How are the up-and-down fenders to be used at a wharf with spiles in front of the wall, say ten feet apart?

Ans. The fore-and-aft fenders are to be placed between two spiles, with the up-and-down fenders inside the fore-and-aft ones.

Mr. Lathrop for libellants was present, but did not cross-examine.

GEORGE B. MURRAY.

Deposition of D. H. INGRAHAM, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 5, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business; also, what has been your business heretofore.

Ans. My name is D. H. Ingraham; I reside in Rockland, Maine, my family is there; I am doing business in Boston. My business at this time is commission merchant; my business has been going to sea, as master of a coasting vessel, for twenty years. I was running to Boston, New York, Portland, and all along shore—most every port between here and New York—carrying lime, corn, and flour, and almost all kinds or merchandise, coal, and doing a general coasting business.

Int. 2. Are you or not acquainted with wharfs and docks, and the manner of their construction?

Ans. I am, sir.

Int. 3. What, if anything, does a jog, say four or five feet deep, in a wharf, indicate?

(Objected to as incompetent and immaterial.)

265 Ans. Well, sir, it indicates a berth, above or below. It indicates a berth—I should strike the words "above or below" out of my answer.

Int. 4. What, if anything, does it indicate as to the depth of water in the berth or berths above or below?

(Objected to for form, and as last.)

Ans. Well, sir, I don't know that it has any indication of the depth of water; a jog in a wharf in all cases. Sometimes there are jogs in wharfs to widen them, where there is plenty of water. I have known instances of that kind.

Int. 5. In your opinion, which is it, careful management or negligent management, in the master or other person in charge of a vessel, to lay her loaded at a wharf where she is to lie aground, and leave her stern extending twenty-five feet below such a jog—say a vessel one hundred and five feet long?

(Objected to as immaterial and incompetent.)

Ans. I should say, sir, it was negligence on the part of the man in charge of a vessel, to lay her twenty-five feet astern of a jog where she would lie aground, as I should think it would be liable to injure the vessel.

Int. 6. In your opinion, which is it, careful management or negligent management, in the master or other person in charge of a vessel, to lay her loaded beside a wharf where she is to lie aground, and place her bow close to the wharf, and leave her stern five or ten feet off from the wharf, and let her ground in that position?

(Objected to as immaterial.)

Ans. My answer to that would be, that it would not be careful management on the part of any person in charge of a vessel, to lay her in that position.

Int. 7. If a loaded vessel is placed at a wharf where she is to lie aground, and is properly made fast parallel to the wharf, can she or not get into the position supposed in the last question?

(Objected to as incompetent and immaterial.)

Ans. If she is properly made fast, she can't get in that position without parting her lines—her fasts.

Int. 8. Where there are two berths at a wharf, one a shoal-water

berth for vessels to lie aground, and the other a deep-water berth for vessels to lie afloat, and a jog four or five feet deep in the wharf,
266 what, if anything, does such a jog indicate as to the relative depth of water above and below it?

(Objected to as incompetent and immaterial.)

Ans. It indicates two berths; and one might be a shoal-water berth, and it might not. I shouldn't say the jog indicated a shoal-water berth. (To question repeated.) It indicates one is a shoal-water berth, and one is a deep-water berth. I don't seem to understand the question exactly. I have already stated, in answer to the question before, there are cases where there are two deep-water berths and a jog. In that case, the jog would be made to give more room—for one vessel to lie a little outside of the other. If the vessels were of the same width, the spars would come in contact, if there were no jog; bowsprit and jib-boom, perhaps I should have said, would come in contact with the other vessel; in that case, the jog would be made to make the berths longer, so that they could lie more comfortably.

Mr. Lathrop, for the libellants, was present, but did not cross-examine.

D. H. INGRAHAM.

Deposition of J. S. WILDER, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 5, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business, and how long you have been engaged in said business.

Ans. J. S. Wilder; Charlestown; I have acted as wharfinger forty-two years on Long wharf and Constitution wharf, except two years at Comey's wharf; all these wharves are in Boston; I am on Constitution wharf now.

Int. 2. Are you or not acquainted with wharfs and docks, and with the manner of their construction?

Ans. Yes, sir.

267 Int. 3. What, if anything, does a jog, say four or five feet deep, in a wharf indicate?

(Objected to as incompetent and immaterial.)

Ans. That would denote there was shoaler water, I should judge; that's what they used to call such a jog as that. Such a jog as that generally indicates a shoal-water berth—a jog thirty-five to forty feet; we then can lay another vessel, lap them by, so that they will not interfere with each other.

Int. 4. Shoal-water berth where?

(Objected to as above.)

Ans. In the docks. We usually, at the head of the docks, have one or two shoal-water berths.

Int. 5. Please explain your meaning a little more fully. What, if anything, is indicated by such a jog, as to the kind of berth that is above, and the kind of berth that is below it?

(Objected to for form, as assuming that the witness has not already answered the question, and as immaterial.)

Ans. I should think every one would understand, that in the upper berth he should haul his stern square with that jog, or beyond it, in order to make the vessel fast properly; it would indicate a difference in

the water, such a narrow jog; if it was a wide jog, unless the lower berth was a long berth, it would naturally follow that it was to make room—more room.

Int. 6. In your opinion, which is it, careful management or negligent management in the master, or other person in charge of a vessel, to lay her loaded at a wharf where she is to lie aground, and leave her stern extending twenty-five feet below such a jog—say a vessel one hundred and five feet long?

(Objected to as incompetent and immaterial.)

Ans. I should think it gross mismanagement on his part, unless he was told to go there; I shouldn't think a man would haul into a dock without instructions; if a stranger to the dock was going into a dock without instructions, he would naturally sound; I am speaking of a loaded vessel; some of these light coasters will run in anywhere; some English ships that come in at my wharf will hardly take my word, but sound for themselves where they are to lie, they are so particular about grounding their ships.

268 Int. 7. In your opinion, which is it, careful management, or negligent management, in the master or other person in charge of a vessel, to lay her loaded beside a wharf where she is to lie aground, and place her bow close to the wharf, and leave her stern five or ten feet off from the wharf, and let her ground in that position?

(Objected to as immaterial.)

Ans. I should say it was negligence.

Int. 8. If a loaded vessel is placed at a wharf where she is to lie aground, and is properly made fast parallel to the wharf, can she or not get into the position supposed in the last question?

(Objected to as incompetent and immaterial.)

Ans. I should think she could if her stern lay off; that would require an explanation in order to understand that; if her stern lay off, it would naturally throw the vessel's bilge across the bed; a vessel where she grounds usually throws the mud up. (To question repeated.) Not if she is properly made fast—if she lay parallel.

Cross-interrogatories by John Lathrop, all put de bene, in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. How many jogs are there in Constitution wharf, and what is the depth of them?

Ans. We have but one jog in the wharf, Constitution wharf; the jog is about two feet and a half deep.

Cross-int. 2. Is the berth above the jog at Constitution wharf a shoal water berth, and the berth below a deep-water berth?

Ans. One has sixteen, the lower one, and the other, ten.

Cross-int. 3. At what time of tide?

Ans. Low water.

Cross-int. 4. Sixteen feet where, and ten feet where?

Ans. At the jog.

Cross-int. 5. Do you mean that there is a descent of six feet at the jog between the two berths?

Ans. Yes, sir.

Cross-int. 6. Is this descent abrupt or gradual?

Ans. Well, it was abrupt when it was dug; it may have washed down some, so that it is more gradual now.

269 Cross-int. 7. Is the bottom of the dock at Constitution wharf such that a loaded vessel could not take ground there in safety

if her stern lay twenty-five feet beyond the jog, supposing the vessel was properly laid and fastened at the wharf above the jog?

Ans. In this particular berth that I speak of, a loaded vessel would be apt to strain; that is the only place at our wharf; the other sides are straight.

J. S. WILDER.

Deposition of JOHN C. NICHOLS, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 5, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business, and how long you have been engaged in your present business?

Ans. John C. Nichols; Somerville; wharfinger; I have been so engaged for about twenty years.

Int. 2. In your opinion, which is it, careful management or negligent management, in the master or other person in charge of a vessel, to lay her loaded at a wharf, where she is to lie aground, and leave her stern extending twenty-five feet below a jog in the wharf, say a vessel one hundred and five feet long, and the jog four or five feet deep.

(Objected to as incompetent and immaterial.)

Ans. I should think it was negligent management.

Int. 3. In your opinion, which is it, careful management or negligent management, in the master or other person in charge of a vessel, to lay her loaded beside a wharf where she is to lie aground, and place her bow close to the wharf, and leave her stern five or ten feet off from the wharf, and let her ground in that position?

(Objected to as immaterial.)

Ans. I should call it negligent management.

Int. 4. If a loaded vessel is placed at a wharf where she is to
270 lie aground, and is properly made fast, parallel to the wharf, can she or not get into the position supposed in the last question?

(Objected to as incompetent and immaterial.)

Ans. She could not without parting her fasts.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, all put de bene, and answers of the witness thereto.

Cross-int. 1. Of what wharf are you a wharfinger?

Ans. Fiske's wharf, and Clapp's wharf, and, till within a year, Lincoln's wharf.

Cross-int. 2. How is the bottom at Fiske's wharf? Is it on a gradual incline from the head of the dock to the foot of the dock, or is there an abrupt descent from one berth to another?

(Objected to as immaterial.)

Ans. Well, part of it is quite abrupt, part of it is regular; for two berths—the lower berths—it is regular; then there is a jog, and shoal water then.

Cross-int. 3. How long have you been wharfinger at Fiske's wharf?

Ans. Off and on for about twenty years.

Cross-int. 4. How abrupt is the descent at the jog at Fiske's wharf?

Ans. I don't know as I know how to answer that question. The jog is thirty feet wide; the descent is regular, from twelve feet depth of water at low tide to eighteen feet; from the twelve feet depth to the eighteen feet depth is about three hundred feet; it's the berth of two ships, that is on the inside of the jog; outside of that jog, there isn't

more than three feet of water, from that up to nothing, on a gradual incline; I say three—about three—it may be four.

Cross-int. 5. How is the bottom at the outside of the jog, gradual or abrupt?

Ans. It is gradual from four feet up; outside the berths dug out for the ships, the inclination is gradual from the mouth of the dock up to the head of it. As I understood the question, the dock is gradual; that I know.

Cross-int. 6. Why do you think it is negligent for a master to lay his vessel twenty-five feet by a jog?

Ans. Because it is apt to be deeper water below a jog than above; and he runs a risk of spoiling his vessel by doing so.

271 Cross-int. 7. It depends upon whether the descent is gradual or abrupt, does it not, whether a vessel can take ground in safety?

Ans. It does depend upon that, of course.

JOHN C. NICHOLS.

Deposition of ADDISON GAGE, a witness for respondents and appellants, taken before Charles F. Walcott, notary public, May 5, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business, and how long you have been engaged in your present business.

Ans. Addison Gage. I reside in Arlington. My business is ice merchant; export ice trade. I have been so engaged about thirty years or more.

Int. 2. Are you acquainted with docks and wharfs in Boston and vicinity?

Ans. I am, sir.

Int. 3. From where do you ship ice?

Ans. Mostly from Charlestown; the largest portion from Charlestown, though I have shipped from East Boston; East Boston and Charlestown what I have shipped from here.

Int. 4. How much ice have you shipped a year, as nearly as you can state—how many cargoes?

(Objected to as immaterial.)

Ans. I have averaged, in the last fifteen years, more than two hundred cargoes a year.

Int. 5. Do you keep a wharf in Charlestown for shipping ice; if yes, how long have you done so?

Ans. I keep a wharf there, and have done so for the last thirty years.

Int. 6. What, if anything, does a jog in a wharf, say four or five feet deep, indicate as to berths at the wharf?

(Objected to as incompetent and immaterial.)

Ans. Well, it indicates a change in the depth of water; that is

272 the fact. I never knew of a jog in that way but the fact was that there was a change in the depth of water. I mean on the side of the wharf, on what we call in the dock. It might not always be so at the end of a wharf.

Int. 7. In your opinion, which is it, careful management or negligent management, in the master or other person in charge of a vessel, to lay her loaded at a wharf where she is to lie aground, and leave her stern extending twenty-five feet below such a jog—say a vessel one hundred and five feet long?

(Objected to as immaterial and incompetent.)

Ans. I should think it would be very careless management indeed.

Int. 8. In your opinion, which is it, careful management or negligent management, in the master or other person in charge of a vessel, to lay her loaded beside a wharf where she is to lie aground, and place her bow close to the wharf and leave her stern five or ten feet off from the wharf, and let her ground in that position?

(Objected to as immaterial.)

Ans. Well, that is very careless management; either of those. There an't be any other meaning put to it but careless management.

Cross-interrogatories (all put de bene) by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. Is there a jog in your wharf at Charlestown?

Ans. Not now. There has been, but not in the last three or four years; it may be five years. I don't want to say exactly when it was filled up.

Cross-int, 2. At the time that jog was there, was the descent abrupt from one berth to the other?

Ans. Yes, sir. Well, I don't want it understood that it was square up and down, like this table, but more than an angle of forty-five degrees. If material, I will state that I don't think the jog in our wharf was as much as four or five feet. It may have been two, or two and a half feet deep, just to indicate where the berth came; and, on reflection, I think it was filled up previous to the war, eight or nine years now.

Cross-int. 3. Was the descent in the bottom such that a vessel, lying in the upper berth, with her stern twenty-five feet below it, would be injured on grounding?

Ans. A loaded vessel would, and I think any one would. I think it would be dangerous to leave any one lying twenty-five feet over.

273 Cross-int. 4. Does that descent in the bottom of the dock still exist?

Ans. Yes, sir, I think; I don't recollect the last time it was dredged out; but after a dock has been a number of years since dredging out, it fills up a good deal, but not sufficient that there can be any change in the laying of a vessel in the upper berth, or the berth where a vessel grounds.

Cross-int. 5. Is there a jog in your wharf at East Boston?

Ans. Yes, sir; perhaps I ought to state that I don't own the wharf at East Boston; it's a wharf that I occupy while loading vessels there—the Eastern Railroad wharf.

Cross-int. 6. How deep is that jog?

Ans. I wouldn't state exactly; but I should think from six to ten feet.

Cross-int. 7. Do you know whether the bottom of that dock is on a gradual descent, or whether the descent is abrupt at the jog?

Ans. The descent is so abrupt that it wouldn't do to lay a vessel to lie by much; I can't state exactly how abrupt.

Cross-int. 8. Your wharf in Charlestown is next to Mr. Oakman's, is it not?

Ans. Yes, sir.

ADDISON GAGE.

Testimony for libellants.

Deposition of JAMES C. MCKIE, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 7, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation.

Ans. James C. McKie; thirty-five years of age; Chelsea, Mass.; I am wharfinger at Rowe's wharf?

274 Int. 2. Are you familiar with the construction of wharfs in Boston and vicinity?

Ans. No, sir; I don't think that I could say that I am.

Int. 3. State whether or not the bottom of the dock at Rowe's wharf is on a gradual incline from the head to the foot of the dock, or whether there is a descent from one berth to another more or less abrupt.

(Objected to as immaterial and irrelevant.)

Ans. There is a gradual descent from the head to the foot of the dock.

Int. 4. How many jogs are there in said wharf?

(Objected to as last.)

Ans. Only one.

Int. 5. Is it or not customary for masters of vessels to sound a berth in a dock in which they were going to lie?

(Objected to as last.)

Ans. Well, at my wharf it is not customary.

Int. 6. State whether or not it is customary for you to have some one on your wharf when a vessel is to haul in, to see that she takes her berth properly.

(Objected to as calling for the practice at one wharf only, because witness has not been shown to be an expert, as last, and for form.)

Ans. Yes, sir.

Int. 7. If you know a vessel is to haul in on Sunday, is it or not customary for you to have some one there when the vessel comes in?

(Objected to as immaterial and irrelevant, and for form.)

Ans. Yes, sir.

Int. 8. If the condition at the bottom of the dock is such that it is necessary for a vessel when taking ground to do so at a certain distance from a wharf, whose duty is it, in your judgment, to see that she is laid at the required distance from the wharf?

(Objected to as immaterial and irrelevant, and because witness has not been shown to be an expert.)

Ans. Well, I shouldn't lay a vessel in that way; I wouldn't take the responsibility of laying a vessel aground, unless it was in her bed, I mean to say.

Int. 9. Suppose, in order that she may take her proper bed, it is necessary that there should be placed between her and the wharf a
275 spar fender forty to sixty feet long, and twenty inches thick, whose duty is it to see that this spar fender is put in?

(Objected to as last.)

Ans. Well, I should notify the person in charge of her that such was the condition of the berth, and that I should not give him the berth unless he furnished the spar. The idea that I wish to convey is, that I should not put a vessel there at my own risk.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. What business is done on Rowe's wharf?

Ans. It is a bonded warehouse wharf; we have a line of steamers running there.

Cross-int. 2. It is a public wharf then, is it not?

Ans. Yes, sir.

Cross-int. 3. Is it kept open for business on Sunday?

Ans. Well, during the summer months we have a line of harbor steamers running from there that make trips on Sundays.

Cross-int. 4. Do the steamers that come to that wharf lie aground to unload?

Ans. No, sir.

Cross-int. 5. How deep is the jog you have spoken of, if you know?

Ans. I should say—I don't know exactly—from fifteen to eighteen feet.

Cross-int. 6. Is it the place of division between the upper and lower berth?

(Objected to.)

Ans. Not always.

Cross-int. 7. Is it usually?

Ans. Yes, sir.

Cross-int. 8. What is the depth of water in the lower berth at mean low water?

Ans. There are three berths on that side; the lower berth of all is the second berth below the jog; at the lower end of the wharf, say twenty-one feet, that is the steamer's berth; she occupies a space
276 of one hundred and forty-five feet; under her bows there would be about twelve feet.

Cross-int. 9. Please now describe the other berths as to length and depth of water.

Ans. The middle berth is about one hundred and thirty feet in length; there would be about twelve feet of water at the lower end, and no water at the upper end; the upper berth above the jog about one hundred and ten feet in length; this berth is entirely bare at low water.

Cross-int. 10. What kind of vessels do you lay in the upper and middle berths; what kind of cargoes do they carry?

Ans. We have various kinds of vessels, all the way from one hundred to three hundred tons, in each of the berths; West India cargoes principally.

Cross-int. 11. Do you often put a vessel of three hundred tons in the upper berth?

Ans. Not often.

Cross-int. 12. Explain what you mean by a vessel lying in her bed?

Ans. Well, the bed is shaped to the bottom of a vessel to a certain extent; deeper at the middle than it is at the sides; deeper also at the lower end than it is at the upper end.

Cross-int. 13. And each loaded vessel drops into this bed as she takes the ground, does she not?

Ans. Yes, sir.

Cross-int. 14. And, ordinarily, a vessel lying at a wharf in the berth, and properly made fast, will drop into this bed; is it not so?

Ans. She will drop into the bed, but it will depend upon her width; she may heel a little one way or the other.

Cross-int. 15. Do vessels carry fenders; if yes, of what kind?

Ans. Ordinarily carry up-and-down fenders, say six to ten inches in

diameter, from four to six feet long; and fore-and-aft fenders, sometimes made of two or three-inch plank; sometimes a whole spar, six to eight inches in diameter, sometimes larger; varying in length from ten to forty feet.

Cross-int. 16. In lying at a wharf which had piles in front of it, a foot or two thick and ten feet apart, the up-and-down fenders would not be of much use, would they?

277 Ans. No, sir. Well, inside of a fore-and-aft fender of course they would be useful if the fender was long enough to take on the upright piles outside the wharf.

Further direct interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 10. Will you please measure the depth of the jog in your wharf, and state what it is, exactly?

Ans. I will.

(After measuring said jog the witness stated: "It measures just fourteen feet.")

Int. 11. State whether vessels frequently or unfrequently lie in the upper berth with their sterns by the jog in your wharf.

Ans. They frequently do, and frequently not.

Int. 12. You speak of steamers coming to your wharf on Sundays, state whether or not other vessels have come there on Sundays.

Ans. Yes, sir.

Further cross-interrogatories by Mr. Dodge, and answers of the witness thereto.

Cross-int. 17. Why does a vessel loading or unloading in the upper berth lie with her stern past the jog?

Ans. Sometimes it is more convenient to load or discharge them in that way; and sometimes they have too much beam to go up their whole length; sometimes they only point their nose in, to put in logwood at the fore hatch.

Cross-int. 18. Have you ever had a heavily-loaded vessel lay her stern twenty-five feet below the jog, and the rest of her above it, and ground in that position?

Ans. No, sir.

JAMES C. McKIE.

278 Deposition of HENRY CURTIS, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 7, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation.

Ans. Henry Curtis; wharfinger, 22 T wharf; I reside in West Roxbury; I am sixty-four years of age.

Int. 2. Are there or not jogs at T wharf? If so, how many, and what depths are they?

Ans. I have a plan here; (and after examining the plan, the witness said,) ten, as I count them here, on both sides of the wharf. I should have to take the depths from the plan; I never measured them. (Mr. Dodge, for the respondents, consents that the witness may give the depth

of the jogs from the plan, with the understanding that he may recall the witness for further cross-examination, if he desires.) The first on the south side is nineteen feet seven; the next, six feet nine; the next, twenty-four, one; next one is sixteen feet two; and that completes the south side. On the north side, commencing at the shore end, as I did on the south side, the first jog is ten feet one; the second one, thirteen; the next, eight foot six; the next one on the original plan, thirteen feet, and probably now about nine feet more, as we filled up the last jog shown on the plan flush, which jog was about nine feet deep.

Int. 3. Do you or not know of any descent from one berth to the other, at any of these jogs, which would render it unsafe for a vessel to lie with her stern twenty-five feet beyond said jogs, or any of them?

(Objected to for form.)

Ans. I do not.

Int. 4. Is the bottom of said dock on a gradual inclined plane, or is there a descent more or less abrupt from one berth to the other?

(Objected to as last.)

Ans. Gradually inclined, to the best of my knowledge.

279 Int. 5. Which of said berths are deep-water berths, and which shoal-water berths?

Ans. The most westerly one is the shoalest; those near the end of the wharf are deeper; at the extreme head of the dock, on the south side, it is bare at low water; while at the lower end of the side of the docks there is sixteen feet at low water, and a gradual incline all the way down.

Int. 6. How is it on the north side?

Ans. Very similar. It hasn't been dug out on the north side so far up. All the digging was done before I went there, so I can't tell exactly. It is fourteen feet water at low tide at the lower end, unless it has been filled in by city drains, which enter the dock, and may have shoaled it, but not to my knowledge. From the jog, eight feet six down, it is never bare at low water. In the berths, about the eight feet six jog, outside the bed of the vessel, the mud is left bare at low water.

Int. 7. If a master of a vessel is ordered to haul in to an upper berth, is it or not customary for the wharfinger to direct him to take up his martingale, if he (the wharfinger) wishes the vessel to lie so far in that the martingale would come over the wall?

(Objected to for form, and also because witness has not been shown to know the customs.)

Ans. Yes, sir; we don't direct him to it if he can do without. If his martingale would take at low water, where he was to haul, he would be notified; and if he don't do it, and suffers damage, he can't call on the wharf for it.

(Answer objected to by Mr. Dodge, because stating only what is done at one wharf.)

Cross-interrogatories by John C. Dodge, esq., for respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Have you ever sounded out the berths at the T wharf?

Ans. I have not.

Cross-int. 2. Is it a public wharf?

Ans. It is not incorporated; it is owned by individuals; it is public so far that we get all the business from the public that we can.

280 Cross-int. 3. For what purpose is it used?

Ans. For the discharging or loading vessels' cargoes, or dock-

age; that is, where a vessel lies there without loading or discharging, and pays for the time she lies there.

Cross-int. 4. Are coal cargoes ever landed there?

Ans. Very seldom. They land coal there for steamships that run from the wharf. Since I have been there, six years last August, there has been no coal landed there, except as stores for vessels. They don't land cargoes there to sell.

Cross-int. 5. The wharf, then, is for the use of all persons who pay for it?

Ans. I should say so. We get all the custom we can. Now and then we have a lot offered that we think it would not be profitable to take, and decline it.

Cross-int. 6. State at which of the berths vessels lie aground, and at which they lie afloat, when loaded.

Ans. It would depend altogether upon how deep the vessel is—how much draft she draws. For instance, a ship drawing seventeen feet wouldn't be entirely water-borne at dead low water at any berth.

Cross-int. 7. State at which they are partially water-borne.

(Objected to as indefinite, as draft is not stated.)

Ans. At any of the lower berths vessels drawing eight, nine, or ten feet would be entirely water-borne; at the jog six feet nine, on the south side there is about three feet at low water—from three to five—as some tides run out much lower than others. On the north side they would have from three to five feet; at the jog eight feet six. They are opposite each other, and there is about the same depth there.

Cross-int. 8. Are there beds formed, in which vessels lie between each of these jogs, where the berths are in shoal water?

Ans. When the tide runs out it cuts the ground out itself. If we can't get a vessel into one berth, we get her into another. Sometimes when we try to get a vessel up she sticks, and cuts a bed down there, so that the next vessel has more water. Her keel and bottom streaks will make a bed there.

Cross-int. 9. Are not the berths in which vessels lie between the jogs?

Ans. The object of the jogs is to get more vessels at the wharf,
281 so that when we may have a vessel in the upper part of the dock between the jogs, and one in the upper part of the berth below a jog, we sometimes put a vessel at the bottom of the berth above the jog, with her stern projecting beyond it, say twenty, thirty, or forty feet, so that one vessel would be inside of the other, and lapping by her. We often gain half a length in a small vessel. All that is necessary at our wharf is, to get the hatchway above the jog, so that we can discharge.

Cross-int. 10. Your upper and shoal-water berths are used chiefly for small vessels, are they not?

Ans. They are.

Cross-int. 11. You have a great many fishermen lie there, do you not?

Ans. Vessels of that build; yes, sir.

Cross int. 12. When you have coal unloaded there, it has been in the deep-water berths, has it not?

Ans. It has.

Cross-int. 13. Have you ever had vessels of the class employed in the coal trade lie loaded across the jogs where they are not water-borne in whole or in part?

Ans. I never have had a coal-loaded vessel on the shoal part of our

docks, since I have been at the wharf. We have had vessels of that class, about the same size, but they didn't happen to have coal in at the time.

Cross-int. 14. What did they have in?

Ans. Fish; Nova Scotia vessels, with barrels of fish, are the only ones I have known to ground across the jogs—long draft vessel. Some of those English vessels that occasionally bring coal here, and occasionally fish, have often grounded abreast of our jogs, and I never knew any of them to take any damage. These vessels usually draw more water than our coasting vessels here.

Cross-int. 15. Are they not sharp-built vessels, made for the fishing business?

Ans. I should think not—that class of British vessels; they bring plaster, coal, and barrel fish; they don't often go a fishing, to catch them—the class I have reference to.

Cross-int. 16. How large are they?

282 Ans. The class that come to our wharf are all the way from fifty tons to one hundred and fifty.

Cross-int. 17. Are the vessels that discharge at your upper berths loaded as deeply as coal vessels?

Ans. About the same thing. If they are loaded beyond a certain depth, they can't be got up there; some coal vessels come here loaded so deep that they couldn't get up to our upper berths, particularly those colonial vessels; they never come there though.

Cross-int. 18. I do not mean to ask what water they draw, but whether the vessels that unloaded at your upper berths are loaded as deeply as the same vessels would be with coal?

Ans. It would depend a good deal upon what they had in. If they had molasses and sugar, they would be pretty deep; generally they load coal vessels with all they can get in—squat them down pretty well.

Cross-int. 19. Do you unload West India vessels with sugar and molasses at your upper berths?

Ans. Not often, but occasonally.

Cross-int. 20. If you told a man to come to a berth, you would expect him to obey your orders, even if he found it necessary to come up with his martingale, would you not?

(Objected to as immaterial and incompetent.)

Ans. I should.

Further interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 8. How far down your wharf have you seen the bottom of the dock at low water on the south side, and how far on the north side?

Ans. Well, on the south side, the tide does not leave it wholly much beyond the head of the dock; sometimes there will be a foot, and sometimes three feet at the head of the dock; sometimes just abreast the bilge of the vessel it will be bare in the two upper berths; on the north side, when the tide has run out low, there is considerably more bare ground in the centre of the dock between us and Commercial wharf; there is always water in the beds next our wharf.

Int. 9. At low water, can you or not see the bottom in those beds in the shoal-water berth?

Ans. In the beds we cannot. It is never left entirely bare.

283 Int. 10. Why, if for any reason, do you place the vessels when loaded with coal at the deep-water berths?

Ans. Because the vessel that is going to take the coal wants to take it there.

Int. 11. Suppose you told a man to take the upper berth at a dock, would you or not expect him to take up his martingale and put his jib-boom over the wall at the head of the dock, if he could discharge at the berth you told him to unload at without taking up his martingale, by not going so far ahead?

(Objected to for form, and as immaterial and irrelevant.)

Ans. I should not; I should not expect him to take it up unless necessary.

Additional cross-interrogatories by Mr. Dodge, and answers of the witness thereto.

Cross-int. 21. All the jogs on the north side of the T wharf jog inward, as you go up from the sea toward the head of the dock; that is, they make the wharf narrower by the width of each jog as you go up?

Ans. Upon the north side; yes, sir.

Cross-int. 22. If you told a man to go into a berth, and told him how far up he was to go, would you expect him to stop twenty-five feet short of the place you directed him to, because it was necessary to come up with his martingale?

(Objected to as incompetent and immaterial.)

Ans. I should not; if he stopped short, you know, he wouldn't be there—wouldn't get his berth.

Further direct interrogatory by Mr. Lathrop, and answer of the witness thereto.

Int. 12. On the south side, are the jogs inward or outward going from the sea towards the shore?

Ans. Going from the sea to the shore, they jog outward.

HENRY CURTIS.

284 Deposition of JOSEPH W. CROCKER, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 7, 1868.

Interrogatories by John Lathrop, esq., for libellants, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation, and how long you have been engaged in the same.

Ans. Joseph W. Crocker; fifty-six years old; I am wharfinger of Battery wharf, in Boston; I have been so engaged for seven years; I reside in Chelsea.

Int. 2. What business were you in before that, and for how many years?

Ans. Followed the sea thirty-five years.

Int. 3. In what capacities, and how long in each capacity?

Ans. I was about three years before the mast, five years an officer, and the balance, twenty-odd years, master of a ship.

Int. 4. Are there any jogs in Battery wharf; and if so, how many?

Ans. Two, sir; two jogs, and one angle.

Int. 5. How is the bottom of your dock dredged?

Ans. On an inclined plane, as near as we could get to it.

Int. 6. How is the bottom of the dock, opposite the jogs; is it on an inclined plane, or is there a descent more or less abrupt near the jogs?

Ans. I should think, as near as we could get to it, an inclined plane. I should judge not quite as much water above the jogs as there is below. It will go at the mouth of the dock, at low water, about twenty-two feet; and along up where we put a vessel it will go from twelve to ten feet; and at the very head of the dock, it is dry at low water.

Int. 7. On which part of the wharf is the dock you have mentioned?

Ans. Between the south and north piers.

Int. 8. Is there or not any other dock on that wharf; and if so, state how that is.

285 Ans. On the south side of the south pier there is another dock; next to the harbor is eighteen feet; upper end of the first berth is fifteen; eighteen, fifteen, for the lower berth; fourteen, twelve, and eight, for the upper berth; and head of it dry.

Int. 9. Is there or not a jog in the wharf by said dock? and if so, state between which of the measurements you have stated, the jog is.

Ans. There is; between the fifteen and fourteen feet.

Int. 10. How is the bottom of that dock at the jog; is it an inclined plane, or is there a descent more or less abrupt at the jog?

Ans. On a plane, as near as we could dredge it.

Int. 11. Have or not those docks been dredged since you have been there?

Ans. Twice, sir; two years ago, the last time; two years the coming June, or July.

Int. 12. If the condition of the bottom of a dock is such that it is necessary for a vessel when taking ground to have a spar fender forty to sixty feet long, and twenty inches thick, between her and the wharf, whose duty is it, if any one's, to see that the spar fender is put in?

(Objected to as irrelevant.)

Ans. If there is no fender there, the wharfinger should tell the captain it is necessary to put a fender in; if he wouldn't attend to it I should put one in and charge him the expense. There should be a fender there, in every berth; two at least secured there all the time. Perhaps I have spoken too abruptly above, about charging the captain the expense of putting it in. The wharf, to be in proper condition, should have a fender there, to keep the vessel from chafing and bearing against the capstan of the wharf, as she rises and falls.

Int. 13. Would or not a jog in a wharf, four or five feet deep, indicate to your mind that a vessel couldn't lie in safety, unless she took ground entirely above or entirely below the jog?

(Objected to as irrelevant, and because witness has not been shown to be an expert.)

Ans. No, sir; I should not consider it any such indication.

Int. 14. Is it or not customary for a master to take up his martingale, unless he is specially ordered to do so?

(Objected to, witness not having been shown to know the customs.)

286 Ans. It is not customary for the master to take it up unless he is ordered to, though it is done in some cases.

Int. 15. Is it or not customary to have a person on your wharf when a vessel hauls in, to see that she is properly placed?

(Objected to as applying to only one wharf, and as not evidence in rebuttal.)

Ans. It is customary, when I know that she is coming.

Int. 16. When you know a vessel is going to haul in on a Sunday, do you or not have some one on the wharf to see that she is properly placed?

Ans. Because the vessel that is going to take the coal wants to take it there.

Int. 11. Suppose you told a man to take the upper berth at a dock, would you or not expect him to take up his martingale and put his jib-boom over the wall at the head of the dock, if he could discharge at the berth you told him to unload at without taking up his martingale, by not going so far ahead?

(Objected to for form, and as immaterial and irrelevant.)

Ans. I should not; I should not expect him to take it up unless necessary.

Additional cross-interrogatories by Mr. Dodge, and answers of the witness thereto.

Cross-int. 21. All the jogs on the north side of the T wharf jog inward, as you go up from the sea toward the head of the dock; that is, they make the wharf narrower by the width of each jog as you go up?

Ans. Upon the north side; yes, sir.

Cross-int. 22. If you told a man to go into a berth, and told him how far up he was to go, would you expect him to stop twenty-five feet short of the place you directed him to, because it was necessary to come up with his martingale?

(Objected to as incompetent and immaterial.)

Ans. I should not; if he stopped short, you know, he wouldn't be there—wouldn't get his berth.

Further direct interrogatory by Mr. Lathrop, and answer of the witness thereto.

Int. 12. On the south side, are the jogs inward or outward going from the sea towards the shore?

Ans. Going from the sea to the shore, they jog outward.

HENRY CURTIS.

284 Deposition of JOSEPH W. CROCKER, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 7, 1868.

Interrogatories by John Lathrop, esq., for libellants, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation, and how long you have been engaged in the same.

Ans. Joseph W. Crocker; fifty-six years old; I am wharfinger of Battery wharf, in Boston; I have been so engaged for seven years; I reside in Chelsea.

Int. 2. What business were you in before that, and for how many years?

Ans. Followed the sea thirty-five years.

Int. 3. In what capacities, and how long in each capacity?

Ans. I was about three years before the mast, five years an officer, and the balance, twenty-odd years, master of a ship.

Int. 4. Are there any jogs in Battery wharf; and if so, how many?

Ans. Two, sir; two jogs, and one angle.

Int. 5. How is the bottom of your dock dredged?

Ans. On an inclined plane, as near as we could get to it.

Int. 6. How is the bottom of the dock, opposite the jogs; is it on an inclined plane, or is there a descent more or less abrupt near the jogs?

Ans. I should think, as near as we could get to it, an inclined plane. I should judge not quite as much water above the jogs as there is below. It will go at the mouth of the dock, at low water, about twenty-two feet; and along up where we put a vessel it will go from twelve to ten feet; and at the very head of the dock, it is dry at low water.

Int. 7. On which part of the wharf is the dock you have mentioned?

Ans. Between the south and north piers.

Int. 8. Is there or not any other dock on that wharf; and if so, state how that is.

285 Ans. On the south side of the south pier there is another dock; next to the harbor is eighteen feet; upper end of the first berth is fifteen; eighteen, fifteen, for the lower berth; fourteen, twelve, and eight, for the upper berth; and head of it dry.

Int. 9. Is there or not a jog in the wharf by said dock? and if so, state between which of the measurements you have stated, the jog is.

Ans. There is; between the fifteen and fourteen feet.

Int. 10. How is the bottom of that dock at the jog; is it an inclined plane, or is there a descent more or less abrupt at the jog?

Ans. On a plane, as near as we could dredge it.

Int. 11. Have or not those docks been dredged since you have been there?

Ans. Twice, sir; two years ago, the last time; two years the coming June, or July.

Int. 12. If the condition of the bottom of a dock is such that it is necessary for a vessel when taking ground to have a spar fender forty to sixty feet long, and twenty inches thick, between her and the wharf, whose duty is it, if any one's, to see that the spar fender is put in?

(Objected to as irrelevant.)

Ans. If there is no fender there, the wharfinger should tell the captain it is necessary to put a fender in; if he wouldn't attend to it I should put one in and charge him the expense. There should be a fender there, in every berth; two at least secured there all the time. Perhaps I have spoken too abruptly above, about charging the captain the expense of putting it in. The wharf, to be in proper condition, should have a fender there, to keep the vessel from chafing and bearing against the capstan of the wharf, as she rises and falls.

Int. 13. Would or not a jog in a wharf, four or five feet deep, indicate to your mind that a vessel couldn't lie in safety, unless she took ground entirely above or entirely below the jog?

(Objected to as irrelevant, and because witness has not been shown to be an expert.)

Ans. No, sir; I should not consider it any such indication.

Int. 14. Is it or not customary for a master to take up his martingale, unless he is specially ordered to do so?

(Objected to, witness not having been shown to know the customs.)

286 Ans. It is not customary for the master to take it up unless he is ordered to, though it is done in some cases.

Int. 15. Is it or not customary to have a person on your wharf when a vessel hauls in, to see that she is properly placed?

(Objected to as applying to only one wharf, and as not evidence in rebuttal.)

Ans. It is customary, when I know that she is coming.

Int. 16. When you know a vessel is going to haul in on a Sunday, do you or not have some one on the wharf to see that she is properly placed?

(Objected to as last.)

Ans. Yes, sir; I invariably, when I know she is coming there on Sunday, have a person there to look for her.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. In what kind of business were you engaged as a ship-master?

Ans. East India trade altogether; Canton, and Calcutta, Manilla, and so forth; about a dozen different ports.

Cross-int. 2. What kind of vessels, and what kind of cargoes, unload at Battery wharf

Ans. There are all classes of vessels; cotton and flour are the principal; hides; we are having a good deal of sugar and molasses now; all southern produce.

Cross-int. 3. How deep are the jogs on that wharf?

Ans. About fourteen feet; that would come within a foot, I should think.

Cross-int. 4. Are they at right angles with the line of the wharf?

Ans. No, sir; an angle of their own; they slant off a little.

Cross-int. 5. About what angle do they make; how many degrees from a perpendicular?

Ans. They wouldn't be above three or four degrees.

Cross int. 6. What personal knowledge have you as to the way in which that dock was actually dredged?

Ans. I was there when it was being dredged, and often spoke
287 to the person doing it, to have no holes and lumps, but make it as nearly on a plane as he could. Also, I saw him measuring with his pole along to get the depths; he gave me the depths that he got along, and I also saw the marks on his pole; it was marked plainly, so that I could see them myself.

Cross-int. 7. At the north pier, what is the depth at the lower and upper end of each of the two berths?

Ans. At the lower end it is twenty-two feet, and the upper end is nineteen; that is the upper berth. The next berth eighteen, at the lower end; twelve, at the upper end.

Cross-int. 8. Between what measurements does the jog come?

Ans. Nineteen and eighteen, sir.

Cross-int. 9. What is there on the north side of the north pier?

Ans. Constitution dock.

Cross-int. 10. Do you know anything about the jog on the north side of the north pier, and the bottom adjoining it?

Ans. I don't know anything about Constitution dock.

Cross-int. 11. The vessels that come to Battery wharf to load or unload all lie water-borne, do they not?

Ans. In the upper berths they do touch a little on soft mud when deeply loaded—large vessels; small ones don't touch at all. Sometimes they haul them up on this dry place, when they want them to touch, to get at their copper or something of that kind.

Cross-int. 12. That is a public wharf, is it not?

Ans. Private; I mean it's not a corporation. This is used both for public and private business. The Metropolitan Company hire the exclusive use of the south pier when they want to use it; if they are not using it, then it is for transient business. The north pier is for transient business.

Cross-int. 13. You mean by transient business that it is for the use of any one that wants it, and will pay the price?

Ans. Yes, sir.

Cross-int. 14. Battery wharf is open for business on Sunday, is it not?

Ans. If a vessel wants to make fast there on Sunday, or leave the wharf and go to sea, we allow her to do so; nothing further than that; we don't work Sundays.

Cross-int. 15. Do you keep a man there to take charge on Sundays?

288 Ans. Not all the time, unless I know something is coming. If there are goods on the wharf Sunday, we put a watchman there to take care of them.

Cross-int. 16. Vessels then come in and make fast on Sunday, when no one is present?

Ans. They may do so; they can do so, if they choose.

Cross-int. 17. If you direct a vessel to come to a particular place, you would expect your direction to be obeyed, even though it should be necessary to come up with the martingale in order to do it, would you not?

(Objected to as incompetent and immaterial.)

Ans. Yes, sir.

Further direct interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 17. Do you or not lay vessels in the upper berth with the sterns projecting beyond the jogs at your wharf?

Ans. We often do.

Int. 18. Suppose you told a man to take the upper berth at a dock, would you or not expect him to take up his martingale, and put his jib-boom over the wall at the head of the dock, if he could discharge at the berth you told him to unload at without taking up his martingale by not going so far ahead?

(Objected to as immaterial and irrelevant, and for form.)

Ans. I should not expect him to do it.

Further cross-interrogatory by Mr. Dodge, and answer of the witness thereto.

Cross-int. 18. (De bene.) If you told a man to go into a berth, and told him how far up he was to go, would you expect him to stop twenty feet short of the place you directed him to, because it was necessary to come up with his martingale?

(Objected to as incompetent and immaterial.)

A. No, sir; I should expect him to go up where I told him to go.

JOSEPH W. CROCKER.

289 Deposition of JAMES M. BLANEY, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 7, 1868.

Interrogatories by John Lathrop, esq., for libellants, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation, and how long have you been engaged in the same?

Ans. James M. Blaney; seventy-six years of age; my occupation is wharfinger; for fifty-one years; I reside in Boston; I am wharfinger at Central wharf; I have been there the whole fifty-one years last March.

Int. 2. Are there any jogs in Central wharf? and if so, how many?

Ans. There are two on the south side, and one on the north side.

Int. 3. How is the bottom of your dock dredged?

Ans. Level; we endeavored to have it so.

Int. 4. Do you mean that you have the same depth of water at the head of the dock as at the foot; or that you have one depth at the head and another at the foot, and that the bottom is level between them?

Ans. I mean to say that we have less water at the top than we do at the bottom of the dock, and that it is level between them, as level as Mr. Woolley could dig; there is the natural rise to the dock; if I take off four feet all the way up the dock, when there was eighteen feet of water at one end and thirteen feet at the other. there would be four feet more water at each end, and the bottom might be level between them.

Int. 5. Are you familiar with the way in which docks and wharfs are constructed in Boston?

Ans. I know pretty nigh how they're built, but I am not very familiar with them, as I don't go on them very often. I have been
290 on about every wharf in Boston, but I don't go on them very often, and haven't kept the run of them.

Int. 6. Do or not vessels lie with their stern projecting beyond the jogs in your wharf?

(Objected to as immaterial.)

Ans. That would depend on how they lay; if they lay with their sterns down the dock, then their sterns can't lay by the jog, because the jog is wide enough to take a vessel in thirty feet wide; this is the south dock, the jogs are thirty feet wide there.

Int. 7. Does the jog you have mentioned jog in or out, as you go from the sea?

Ans. It jogs in; a vessel lying up the dock lies inside of one that lies at the lower berth at the end.

Int. 8. Do or not at your wharf vessels then lie with their bows projecting by the jogs?

Ans. Yes, they lie by both jogs.

Int. 9. What is the object of a jog?

(Objected to, the witness not having been shown to be an expert beyond his own wharf.)

Ans. They are to make more room and to give wider space on the wharf for landing your goods.

Int. 10. Do you or not know of any custom or usage by which a jog four or five feet wide indicates that there is a descent more or less abrupt at the jog, from one berth to the other, and that a vessel cannot ground opposite the jog in safety?

(Objected to as immaterial and irrelevant, and because witness has not been shown to be an expert.)

Ans. I don't know of any.

Int. 11. Should you consider a dock dredged in the way mentioned, with a descent so abrupt at the jog that a vessel cannot take ground in safety, if she lies partly above and partly below, a safe and proper mode of dredging a dock, or a dangerous way?

(Objected to as irrelevant and immaterial, and as opening new matter not in rebuttal, and because witness has not been shown to be an expert.)

Ans. I should think it an improper way; if I was going to have dredging done, I should have it made so that a vessel could ground without any risk of hogging, or anything of that kind.

291 Int. 12. If the condition of the bottom of a dock is such that it is necessary for a vessel, when taking ground, to have a spar fender forty to sixty feet long, and twenty inches thick, between her and the wharf, whose duty is it, if any one's, to see that the spar fender is put in?

(Objected to as irrelevant.)

Ans. I consider it the duty of the master of a vessel to do that. We generally have a spar fender chained to the wharf, and generally put in, so as to come in the berth; if there was no spar fender in the berth, I should consider it the duty of the captain to put one in. (To question repeated.) In that case, I should think it was my place to have it put in. If the bottom was good, it would be the captain's place, but if the bottom was bad, it would be my duty to tell him, and find a fender for him.

Int. 13. Is it or not customary for a master to take up his martingale, unless he is specially ordered to do so?

(Objected to, the witness not being shown to know the customs.)

Ans. It is not customary to do so.

Int. 14. Is it or not customary to have a person on your wharf when a vessel hauls in to see that she is properly placed?

(Objected to, as applying to one wharf only, and as not evidence in rebuttal.)

Ans. We endeavor to have one there till she is placed properly.

Int. 15. When you know a vessel is going to haul in on a Sunday, do you or not have some one on the wharf to see that she is properly placed?

(Objected to as last.)

Ans. We calculate to have some one.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. What is the depth of the water just above and below the jogs in Central wharf, which you have mentioned, at low water?

(Objected to as immaterial.)

Ans. The first jog there is seventeen feet at low water; at the other jog, there is about fifteen at low water; there is not so much in the spring tides; at other tides there is, as the tides do not run out so low.

292 Cross-int. 2. Then vessels lying near these jogs are water-borne, are they not, at all times of tide?

(Objected to as last.)

Ans. Yes, sir.

Cross-int. 3. Central wharf is a public wharf, is it not?

Ans. Yes, sir.

Cross-int. 4. And it is kept open for business on Sunday, is it not?

Ans. Yes, sir.

Cross-int. 5. What fenders do vessels usually carry?

Ans. If they carry their own fenders, they are small fenders, such as they can handle without much trouble. They have, most generally, a long spar, say twenty feet long, what they call a fore-and-after fender, and up-and-down fenders, about six feet long; when they put in the fore-and-aft fender, they don't use the up-and-down ones, unless in between the vessel and the fore-and-aft fender.

Cross-int. 6. Are not vessels that are properly fitted out always furnished with up-and-down, and fore-and-aft fenders?

Ans. I should consider that a necessary article.

Cross-int. 7. And it is the duty of the master to see that these fenders are put in when needed, is it not?

Ans. It is the duty of the mate, so considered; not the master.

Cross-int. 8. Is it necessary to come up with the martingale in coming to any of the berths at Central wharf?

Ans. No, it isn't necessary, unless you need the room. If you haven't got room for the length, it is sometimes necessary to come up with the martingale to give her length, but very seldom.

Cross-int. 9. (De bene.) If you direct a vessel to come to a particular place, you would expect your direction to be obeyed, even though it should be necessary to come up with the martingale in order to do it, would you not?

(Objected to as incompetent and immaterial.)

Ans. Well, I should calculate if there was length for the vessel that he would haul into it; but, if there was not room to haul in without letting up his martingale, I should expect him to do it, [but I generally calculate to be there when such a thing is done.]

(Part in brackets objected to by Mr. Dodge, as not responsive.)

293 Cross-int. 10. (De bene.) If you direct a man to come to a certain place, do you not expect your direction to be obeyed, even although it is necessary to come up with the martingale to do it? Please answer directly.

Ans. Unless I told him to top his martingale (come up with it) I don't think he would do it.

Further interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 16. What do you mean by your wharf being kept open for business on Sunday? Explain what business is then done there.

Ans. It's no more open on Sunday than any other day; if a vessel arrives we give him a berth; it's always open for business.

Int. 17. Do you or not do any other business there on Sundays?

Ans. We don't calculate to.

Int. 18. What is the object of a vessel's fenders.

Ans. To keep the vessel from chafing; sometimes they have chain-plates, or, as they are now called, channels; fenders keep them from catching on the cap of the wharf; they don't usually have channels now; if they do, they are very narrow, only three or four inches.

JAMES M. BLANEY.

Deposition of ELIAS E. DAVISON, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 8, 1868.

Interrogatories by John Lathrop, esq., for libellants, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and how long you have been engaged in the same.

Ans. Elias E. Davison; Boston, Mass.; I have been wharfinger of Lewis wharf twenty-three years, and am now wharfinger of that wharf; I am sixty-three years of age.

294 Int. 2. What business, if any, were you engaged in before you became wharfinger of Lewis wharf?

Ans. I commanded a ship.

Int. 3. How many years were you a mariner, and in what capacities, and how many years in each?

Ans. Twenty-five years a mariner; in every grade; for five years before the mast, and officer; and twenty years master.

Int. 4. Are you or not acquainted with the wharfs and docks in Boston and vicinity?

Ans. Well, sir, to some extent; I know pretty well about Commercial wharf and Lewis wharf, particularly.

Int. 5. How about other wharfs?

Ans. Only a general observation, in passing to and fro, and sailing from different wharfs when I was master of a ship; I sailed from India wharf and Union wharf.

Int. 6. Has or not Lewis wharf a jog in it?

Ans. Yes, sir, it has two jogs; it was first built by the Hancocks, on the northern side; then built wider when it was extended, and then built wider when it was extended again to the commissioner's line; making two jogs in that way.

Int. 7. How is the bottom of your dock dredged?

Ans. Dredging, commencing at, I should think, about sixteen or seventeen feet to nothing, on the north side—a perfect inclined plane; on the south side, from twenty-six feet to nothing, on a perfect inclined plane as near as you could draw a line; there are no jogs on the south side.

Int. 8. Do you mean sixteen or seventeen feet at the outer end of the dock, at low water?

Ans. Yes, sir. The tide ebbs and flows in neap tides, eight to ten feet; and in spring tides, fourteen feet; we have about the best water there is in Boston.

Int. 9. Do you know how the dock at Commercial wharf is dredged; whether on an inclined plane or not?

Ans. Last November we clubbed together, Commercial and Lewis wharf, to dredge out, to have the bottom equal all the way up. Mr. Woolley did the dredging; it was dredged on an inclined plane; [there is no other safe way.]

(Part in brackets objected to by Mr. Dodge, as not responsive.)

295 Int. 10. What is the purpose of a jog in a wharf?

Ans. I presume they were built as I first stated; the wharf first was built narrow, then widened as it was extended; I presume that is the case; it was before my day.

Int. 11. In your last answer, of what wharf were you speaking?

Ans. Lewis.

Int. 12. Do you or not know of any custom or usage by which a jog in a wharf, four or five feet deep, indicates that there is a descent in the bottom of the dock so abrupt that a vessel cannot ground in safety, unless she lies entirely above or entirely below the jog?

(Objected to, the witness not being shown to be an expert.)

Ans. Quite as safe below the jog as above; in dredging at the jog, we go as close to the wall as possible, not to undermine; you want to have nearly as much water above the jog as you do below it, the taper being gradual. (To question repeated:) I don't know of any such abrupt dredging in my experience.

Int. 13. Is it or not customary for masters of vessels to take up their martingales without being ordered by the wharfinger to do so?

(Objected to as last.)

Ans. I think not, sir, as far as my experience goes. We order it at Lewis wharf, if necessary; it makes a difference of eight feet in the rise for a vessel of about three hundred tons; for such a vessel the martingale is about eight feet long, and larger in proportion to the size of the ship.

Int. 14. Is it or not customary to have a person on your wharf when a vessel comes in to see that she is properly placed at the wharf?

(Objected to, as calling for the practice at only one place, as irrelevant and immaterial, and as not in rebuttal.)

Ans. It is, sir.

Int. 15. How is this on Sundays?

(Objected to as last.)

Ans. I generally have my deputy there on Sunday.

Int. 16. If you know a vessel is coming in on Sunday, do you or not have some one there to see that the vessel is properly placed?

(Objected to as last, and for form.)

Ans. Always.

Int. 17. Is it, in your judgment, a proper or improper mode of dredging a dock to have a descent in the bottom of the dock opposite
296 a jog so abrupt that a vessel cannot take ground there in safety unless she lies entirely above or entirely below the jog?

(Objected to, the witness not having been shown to be an expert.)

Ans. It is very improper to have it so abrupt, in my opinion, because you may want to haul a vessel ahead ten feet, or drop her astern ten feet in moving her hither and thither, and if you've got such a dock you've got to place her just so, and that wouldn't answer.

Int. 18. Is it, in your judgment, a proper or improper mode of dredging a dock to have a descent in the bottom of the dock opposite the jog so abrupt that a vessel cannot take ground there in safety if she lies with her stern twenty-five feet below the jog?

(Objected to as immaterial, and as last.)

Ans. It would be unsafe to have the bottom so abrupt; it would be apt to hog a vessel.

Int. 19. Is it a common or uncommon thing for a larger vessel, lying astern of a smaller vessel at a wharf, to lie with her jib-boom over the taffrail of the smaller vessel?

Ans. Yes, sir, it is common; for a vessel is built, generally, drawing more water aft than forward, and is to all intents and purposes an inclined plane, and, lying at the wharf, the vessel astern of the one ahead will sometimes have her jib-boom project over the taffrail of the other vessel, and sometimes the bowsprit, by letting up the martingale, so that they will both ground together.

Int. 20. Suppose the condition of the bottom of a dock is such that it is necessary for a vessel, in order that she may take ground in safety, to have between her and the wharf a spar fender, forty to sixty feet long, and twenty inches thick, whose duty is it to see that the fender is put in?

Ans. It is the duty of the wharf; we have, I think, sixteen fenders that are permanent, chained, always float up and down there; in more shallow ground a fender of twenty feet is sufficient to put against the wales to prevent the channels from catching on the wharf, which is the object of a fender. A vessel most always has up-and-down fenders, a small piece of spar sawn off, with a lanyard attached to them; the fore-and-aft fenders are provided by the wharf.

Int. 21. Where are the stationary fenders you speak of chained?

Ans. At the end—two ends and the sides in deep water; coming
297 up, I should think, three hundred feet on each side, what we call our deep-water berths.

Int. 22. Are or not these chained at each end in the berths?

Ans. No, sir. They are generally so as to take the wales amidships, to protect her channels. When a ship's masts are condemned, sprung, and so forth, we buy them for large fenders, twenty-six or thirty inches,

which makes a good protection, keeps a ship well off. We have a chain at each end of the fender, with a swivel, so that the fender revolves 'round, and never can injure the ship with the chain; the ends of these two chains are fastened to the wharf.

Int. 23. Are you or not acquainted with the usages and customs of wharfs in Boston and vicinity?

Ans. Well, only in a general way, excepting Lewis and Commercial wharf.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. How deep are the jogs in Lewis wharf?

Ans. The upper one, towards Commercial street, is ten feet; the other is eight feet deep, not far from that; I should think about that. I never measured them.

Cross-int. 2. How far is the first, and how far the second, from the deep-water end of the wharf?

Ans. I should think the first would be one hundred and thirty feet, and the second not far from two hundred feet, further up, north side.

Cross-int. 3. And how much to the head of the dock?

Ans. From the upper jog to the head of the dock, I should think, would be just about three hundred feet more to Commercial street.

Cross-int. 4. What depth of water have you at each of these jogs?

Ans. At low water I should think about fifteen at the lower jog, and about ten feet at the upper jog; a regular gradation—regular taper.

Cross-int. 5. Are there jogs in Commercial wharf? If so, how many?

Ans. One only; in the south side.

Cross-int. 6. How deep is it, and how deep is the water at it, if you know?

298 Ans. Well, I should think it was eighty or ninety feet. The jog angles. I should think there might be twelve or fourteen feet of water there. The jog angles, I should think, about thirty or forty degrees.

Cross-int. 7. Do the jogs at Lewis wharf jog inward as you go up from the sea, so as to make the wharf narrower?

Ans. Yes, sir.

Cross-int. 8. Both these wharfs are public wharfs, are they not?

(Objected to as immaterial.)

Ans. They are. We take those who apply for a berth.

Cross-int. 9. They are open for business on Sundays, are they not?

Ans. Yes, sir.

Cross-int. 10. And a person is kept there on Sundays to attend to vessels coming in and going out, is there not?

Ans. Yes, sir. We have two deputies, who take turns living near by.

Cross int. 11. (De bene.) Have you any personal knowledge as to the way in which the private docks used for wood, coal, etc., are dredged?

Ans. No, sir.

Cross-int. 12. (De bene.) When persons come to your wharf, and ask for a berth, you tell them where to come, do you not?

Ans. Yes, sir.

Cross-int. 13. (De bene.) And you expect them to haul into the place pointed out, do you not?

Ans. Yes, sir.

Cross-int. 14. (De bene.) If, in order to come to that place, it is necessary to come up with the martingale, you expect them to do it, do you not?

Ans. Certainly, by being prompted so to do.

Cross-int. 15. (De bene.) If you tell a man to come to a certain place, and say nothing about the martingale, and he finds that it is necessary to come up with the martingale in order to reach that place, or to lie in it safely, do you not expect him to do it without being told expressly?

Ans. He probably wouldn't know the necessity for it—how far the vessel would fall, and so forth. Therefore we make it a point to tell him he must do it; he would take the responsibility of the damage if he didn't do it, if we had told him to do it. Sometimes they are ugly, and won't do it.

299 Cross-int. 16. (De bene.) If he knew the necessity of doing it, you would consider it his duty to do it without being told, would you not?

(Objected to as immaterial.)

Ans. Yes, sir; I think certainly it would be his duty to do it without any prompting.

Cross-int. 17. How many vessels do you stow at your wharf at once?

Ans. We can stow eighteen, all sizes; they vary.

Cross-int. 18. Suppose there are two berths at a wharf; one a shoal-water berth, where vessels lie aground, and the one below it a deep-water berth, where the vessels rise and fall with the tide, how near to the stern of the vessel in the shoal-water berth can the one in the other berth safely lie?

(Objected to as immaterial.)

Ans. Well, I think there ought to be enough, so that the jib-boom would not project at all; that is, supposing that the stern vessel was afloat, and the other one was aground.

Cross-int. 19. Do not vessels engaged in carrying wood, coal, etc., which lie aground to unload, usually carry upright fenders and fore-and-aft fenders, both?

(Objected to as immaterial.)

Ans. They generally carry up-and-down fenders; I am not aware of their carrying fore-and-aft fenders.

Cross-int. 20. You do not know whether they do or do not carry the fore-and-aft fenders, do you?

Ans. I do not.

Cross-int. 21. Lewis wharf and Commercial wharf are so constructed that you can place a vessel anywhere along the sides to discharge, are they not?

Ans. Yes, sir.

Cross-int. 22. It is necessary to have it so, in order to make good stowage of vessels coming there, is it not?

(Objected to as immaterial.)

Ans. Yes, sir.

300 Further interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 24. Is or not your wharf open for any other business on Sundays than for vessels to come in and go out?

Ans. No, sir.

Int. 25. Suppose you told a man to take the upper berth at a dock, would you or not expect him to take up his martingale and put his jib-boom over the wall at the head of the dock if he could discharge at the berth you told him to unload at, without taking up his martingale, by not going so far ahead?

(Objected to as immaterial and irrelevant, and for form.)

Ans. I should not expect him to, unless he knew how far the vessel would settle.

Int. 26. If you merely told a man to discharge at a certain berth, should you or not expect him to take up his martingale and lay his jib-boom over the wall if he could discharge at the berth mentioned without going so far ahead as to render taking up the martingale necessary?

(Objected to as last.)

Ans. There would be no necessity for it in that case; we never put a man to that inconvenience, if we can help; there is not so much trouble in coming up with the martingale, as in setting it up again afterwards.

ELIAS E. DAVISON.

301 Deposition of J. W. RICKER, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 8, 1868.

Interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and if you say you are a mariner, state how long you have been one, and in what capacities.

Ans. J. W. Ricker; 46 years of age; I reside in Portland, Maine; I have been master of a vessel in the coasting trade for the last twenty-three years; I have been to sea since I was eleven years old.

Int. 2. State what experience you have had in the coasting trade.

Ans. I have been in the lumber coasting trade, molasses, and coal, from one port to the other.

Int. 3. Between what ports have you been in the coasting trade?

Ans. Between Bangor, Portland, Boston, New York, and Philadelphia. What we call the coasting trade, from Virginia to Maine, all along the coast.

Int. 4. Are you or not familiar with docks and wharfs, and the mode of constructing them?

Ans. Yes, sir; I am very familiar with the docks and wharfs here in Boston, and in different places.

Int. 5. Do you or not know of any custom or usage in respect to a jog in a wharf, four or five feet in depth, indicating that a loaded vessel cannot take ground in safety unless she lies entirely above or entirely below said jog?

(Objected to as immaterial and irrelevant.)

Ans. No, sir; I don't.

Int. 6. Do you or not know of any custom or usage that a jog in a wharf, four or five feet in depth, indicates that the bottom of the
302 dock is such that a loaded vessel cannot ground there in safety, with her stern twenty-five feet below said jog?

Ans. No, sir; I never had any trouble of that kind; I have laid at a great many of them, with my bow and stern by; it don't indicate any bad place that I ever heard of.

Int. 7. Do you or not know of any custom or usage, when a vessel is to take a shoal-water berth above a jog four or five feet deep, for her to haul her stern square with the jog, in order to ground there in safety?

Ans. If we could haul in square with the jog handy, we should do so; but we often haul in with our stern lying by.

(To question repeated:) Well, if she was hauled square in the jog and grounds, she would be more likely to ground safe.

Int. 8. Do you or not know of any custom or usage to dredge a dock in such a manner, opposite a four or five foot jog, that a loaded vessel cannot take ground there in safety if her stern is twenty-five feet below the jog?

(Objected to, witness not being shown to be an expert.)

Ans. I don't recollect any dredging of that kind; they generally dredge out the length of a vessel—inclined all the way up.

Int. 9. Is it or not customary in the coasting trade to have a person on the wharf when a vessel hauls in, to see that she is properly placed at the wharf?

Ans. It is customary to have a wharfinger generally on the wharf to see to hauling vessels into the dock.

Int. 10. Is it or not customary for vessels to take up their martingales without being specially ordered to do so?

Ans. No, sir; it is not.

Int. 11. For what purpose are a vessel's fenders?

Ans. A vessel's fenders are to keep them from wearing—chafing against a wharf.

Int. 12. How much of a job is it to take up the martingale, and put it back, if the head-stays go through the martingale?

Ans. That would depend on what kind of a vessel it was; whether large or a small vessel.

Int. 13. Say in a schooner two hundred and twenty-six tons, old measurement?

303 Ans. Well, I should say to turn it up, and put it back, and get all the rigging back, would be a day's work for two men.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Are you master of a vessel now; if so, of what vessel?

Ans. The schooner "Shawmut."

Cross-int. 2. Where does she belong, and who owns her?

Ans. Portland; Dupee and others own her. She is partly owned here—one-fourth here. Dupee owns one-quarter; he is the Boston man.

Cross-int. 3. Do you know Mr. Sawyer, the libellant, who sits here, and how long have you known him?

Ans. Yes, sir; I have known him for twenty-eight or thirty years.

Cross-int. 4. Have you sailed for him, or in any vessel of which he is an owner?

Ans. I have been mate of a vessel in which he was an owner.

Cross-int. 5. Do you know the other owners of the "Bowdoin," besides Mr. Sawyer?

Ans. I know the captain of her, I suppose to be an owner. I have no acquaintance with the owners of the "Bowdoin" at all, further than Captain Sawyer.

Cross-int. 6. How long have you known the captain of her?

Ans. About two years—a little upwards.

Cross int. 7. Do any of the owners of the "Bowdoin" own in the vessel you are now in?

Ans. Not to my knowledge, sir. There are a great many owners in my vessel. I don't know what other vessel they own in.

Cross-int. 8. Are you in any way related to Mr. Sawyer?

Ans. No, sir; not in the least.

Cross-int. 9. Where is the vessel you are now in?

Ans. At India wharf, north side.

Cross-int. 10. What business is she in, and how large is she?

Ans. She is eighty tons, new tonnage; one hundred and ten,
304 old tonnage. She is in the packeting business between here and Portland.

Cross-int. 11. How long have you been in her and in the packeting business between here and Portland?

Ans. I have been in this vessel two years this month; I have been in that business seventeen years.

Cross-int. 12. Constantly for seventeen years?

Ans. No, sir; not constantly. Perhaps I have been out of business six or eight months, but that has been my trade—my business.

Cross-int. 13. In what kind of vessels have you carried on the packeting business; what vessels, and how large?

Ans. Schooners; the "Eliza Ellen," "Southerner," and the schooner "Alice;" also, the "Shawmut"—the one I am in now. The "Eliza Ellen" was one hundred and ten tons, old measurement; the "Southerner," one hundred and forty, old tonnage; the "Alice" was about seventy tons, old tonnage.

Cross-int. 14. What cargoes have you carried between Boston and Portland, principally, and at what wharfs in Boston have you unloaded or loaded them?

Ans. Well, we have different cargoes. We have lumber, iron, molasses, hay—different cargoes. We often go from one wharf to another; have no fixed wharf for discharging. The principal wharfs are Damon's wharf, Charlestown, and Central wharf, in Boston. We unload most at those wharfs.

Cross-int. 15. How many cargoes of coal or wood have you brought during the last seventeen years?

Ans. That is a question I couldn't answer, without looking over my book, correctly. I have brought cargoes of wood, but none of coal.

Cross-int. 16. Have you brought any of coal?

Ans. Yes, sir; I have brought cargoes of coal, but not in the last seventeen years.

Cross-int. 17. What knowledge have you of the way docks are dredged in Boston or vicinity?

Ans. I have seen them dredged out.

Cross-int. 18. What docks have you seen dredged, and who did it?

Ans. I have seen Central dock dredged out last season; I don't
305 know who was doing it. Just above South Boston bridge, when I was there the other day, they were dredging a dock out; I don't know who was doing it.

Cross-int. 19. Do you know, in either of these cases, of your personal knowledge, in what form the bottom was dredged?

Ans. No, sir; I don't.

Cross-int. 20. Do you not bring molasses to Boston from Portland for Mr. Brown?

Ans. We fetch it from Mr. Brown, in Portland, here.

Cross-int. 21. How often have you done this?

Ans. Well, sometimes; perhaps we do it once in a month or two.

Cross-int 22. For how many years have you done so?

Ans. Eight or nine years, sir.

Cross-int. 23. What is his whole name?

Ans. All I could answer for his name is J. B. Brown; that's the way the bills of lading are filled up; that's all I know of it.

Cross-int. 24. Do you not know, or have you not been told that Mr. Brown was an owner of the "Bowdoin?"

Ans. I think I have some recollection of hearing the captain say that Mr. Brown owned a piece of her; it strikes me that he did.

Cross-int. 25. Who first spoke to you about this case?

Ans. The captain was the first one that gave me any information about it; I was here at the time the case occurred.

Cross-int. 26. Who asked you to come here to testify?

Ans. Captain Sawyer.

Cross-int. 27. How many berths for vessels to lie at are there at Damon's wharf?

Ans. Well, it would depend whether they were large or small vessels; well, I should say, that clear 'round the wharf there would be six berths for schooners of one hundred and ten or one hundred and sixteen tons.

Cross-int. 28. Is there not, on each side of the dock at Damon's wharf, a shoal-water berth, where vessels lie aground to unload, and a deep-water berth where they lie afloat to unload?

(Objected to as immaterial.)

Ans. Yes, sir.

Cross-int. 29. And there is a jog between these berths, is there not?

306 Ans. Yes, sir; there is a jog upon each side.

Cross-int. 30. When you have unloaded there, have you lain aground in the upper or shoal-water berths?

Ans. Yes, sir; I have lain aground in both of them.

Cross-int. 31. Have you ever laid your vessel in those berths loaded, and let her ground with your stern extending twenty-five feet past the jogs into the deep-water berths?

Ans. Yes, sir; I have grounded so, loaded. I wouldn't say particular about it's being twenty-five feet by the jog; I never measured it, so I couldn't tell exactly; from eighteen to twenty-five feet.

Cross-int. 32. How much will you swear it was past the jog?

Ans. Well, the last time that I lay there, I loaded a cargo of molasses there; our break of the quarter deck was square with the corner of the wharf, the jog; I should say my stern then was eighteen or twenty feet by the corner of the jog.

Cross-int. 33. How much was your keel by?

Ans. The keel about sixteen feet—sixteen to seventeen; I can't tell to a foot.

Cross-int. 34. Did you lie there over a low water, with a full cargo in?

Ans. Yes, sir; I had a full cargo in; I grounded, and lay 'till the next flood tide; I lay one low water.

Cross-int. 35. Why did you not go out when you got loaded?

Ans. Because the dock was blocked with vessels so that I couldn't get out.

Cross-int. 36. You did not then intend to ground there?

Ans. No, sir; we intended to get out that tide.

Cross-int. 37. What cargo did you take in?

Ans. I took in molasses there, sir.

Cross-int. 38. Do you know how much of your keel was supported by the mud of the dock, and how much extended over the water unsupported?

Ans. No, sir, I don't; I couldn't go down there to measure it.

Cross-int. 39. Do you, of your own knowledge, know of a dock in

Boston where there are two berths at a wharf, one a shoal-water berth, where vessels lie aground to unload, and one below, where they lie afloat to unload, with a jog four or five feet deep between these
307 berths, where the descent from the shoal-water berth to the deep-water berth is not more abrupt than the general inclination of the bottom of the dock in the berths?

(Objected to as incompetent and immaterial.)

Ans. I don't know that I do.

Cross-int. 40. Large vessels do not usually have the head-stays through the martingale, do they?

Ans. No, sir; not square-rigged vessels.

Cross-int. 41. Do large schooners usually have them so?

Ans. It is a common thing to have them so.

Cross-int. 42. What is the other way of rigging them?

Ans. To have an iron hand on the side of the martingale, to serve as a hook.

Cross-int. 43. What vessel was it you laid with her stern eighteen feet past the jog at Damon's wharf, and when was it?

Ans. It was the "Shawmut," the one I am in at present; it was about a year ago, I think; I could tell by looking in my freight-book.

J. W. RICKER.

Deposition of GEORGE SNOW, a witness for the libellants and appellees, taken before Charles F. Walcott, notary public, May 9, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and if a mariner, how long you have been such, and in what capacities.

Ans. George Snow; age is fifty-three years; I reside in Bangor, Maine; I am a mariner, and have been for thirty-seven years; I have been in all capacities, from cook to captain; I have been captain for fifteen years.

308 Int. 2. Have you or not been in the coasting trade; and if so, how long?

Ans. That has been my business all my life; I have never done anything else—coastwise.

Int. 3. Are you or not acquainted with wharfs and docks in Boston; and what means have you had of becoming acquainted with them?

Ans. I am, by lying at them at different times.

Int. 4. How many of the wharfs have you lain at?

Ans. It would be pretty hard for me to tell how many; but I don't think there is one from Craigie's bridge to Dover street that I haven't lain at; some of them I have lain to a number of times; Central wharf more than any other one; when I have taken in return cargo to Bangor, I have most always lain there to receive it; discharging we have done most everywhere. For twenty years I have been running between Bangor and Boston.

Int. 5. Do you or not know of any usage or custom that a jog four or five feet deep in a wharf indicates that the bottom of the dock is in such a condition that a loaded vessel cannot take ground there in safety, if she lies with her stern twenty-five feet by the jog?

(Objected to as immaterial and irrelevant, and because witness has not been shown to be an expert.)

Ans. I don't know of any; it is something that I never heard of.

Int. 6. Have you or not lain at wharfs in Boston with your vessel's stern by the jog, and taken ground there, when loaded?

Ans. Yes, sir, I have.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Who asked you to come here to testify?

Ans. Captain Sawyer asked me to come this morning.

Cross-int. 2. Who before that?

Ans. Captain Ricker.

Cross-int. 3. When did Captain Ricker speak to you about it?

Ans. Day before yesterday he spoke to me about it; I don't know but what I was a little ahead of my story; he asked me to testify; he merely told me that Captain Sawyer wanted me to go up to Mr. Lathrop's
309 office; I believe that was the purport of the story, at that time.

Cross-int. 4. You talked over the case with Captain Ricker, did you not?

Ans. Nothing particular; only he told me what the case was, and I recollected the circumstances at the time; there was nothing in particular said about it.

Cross-int. 5. What is Ricker's first name, and how long have you known him?

Ans. Well, John; and he's got a middle letter; I don't know what that is. I've known him twenty years.

Cross-int. 6. Did he tell you that he had testified in this case, or was going to?

Ans. No, sir.

Cross-int. 7. What made you think he was here yesterday?

Ans. He told me to-day he was here yesterday; or rather last night, I guess it was he told me.

Cross-int. 8. What did he say he was here for?

Ans. Well, I don't know as he told me anything about what he was here for; I don't know a single word of his telling me what he was here for; I think if he had told me I should recollect it.

Cross-int. 9. How long have you known Captain Sawyer?

Ans. Well, I've known Captain Sawyer by sight I don't know how long; perhaps as long as I've known Captain Ricker; but of particular acquaintance with Captain Sawyer I never had any, I might say.

Cross-int. 10. Did you ever, as master, bring a cargo of coal to Boston?

(Objected to as immaterial.)

Ans. I never did.

Cross-int. 11. Do you know of a wharf in Boston at which there are two berths; one upper berth, where vessels lie aground, and a lower berth, where they lie afloat, with a jog from three to eight feet deep between them, where the descent from the upper to the lower berth is not more abrupt or steep than the general slope of the bottom of the berths?

Ans. I don't know of any such one; I don't know but what
310 there is; I never sounded the bottoms to know; I don't know of any such place in Boston.

Further interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 7. What do you mean when you say you don't know of any such place in Boston? what sort of a place is it you don't know of?

Ans. I mean to say, that I don't know of any place in Boston where

there is a jog, where the water shoaled so fast as it was represented to me to shoal up; as I understood the question, it was if I knew of a place where there was a jog in a wharf where the water shoaled so that a vessel lying in the head berth, with her stern by the jog twenty feet, to do her any damage; I don't know of any such place in Boston.

Int. 8. Do you or not know of any place in Boston where there are two berths, one upper, where vessels lie aground, and one lower berth, where they lie afloat, with a jog at the head of the lower berth three to eight feet deep, where the descent from the upper to the lower berth is more abrupt than the general slope of the bottom?

(Objected to for form.)

Ans. I know of none.

Further cross-interrogatory by Mr. Dodge, and answer of the witness thereto.

Cross int. 12. Do you know of any wharf in Boston where there is an upper berth, in which vessels lie aground when unloading or loading, and a deep-water berth below it, where they lie afloat to load or unload, with a jog from three to eight feet deep between them, where you know anything about the descent from one to the other, of your own knowledge?

Ans. I don't know of any such place; I don't know anything about it; I am not sure that I understand that question; so far as the two berths are concerned, I know of plenty of places where there are two berths, but I don't recollect in regard to this jog; I don't know of any place of that kind, where there is a jog, that I recollect of; so far as jogs in a wharf are concerned, I never pay any attention to them any way; I always got as near my place as I could.

311 Interrogatory by Mr. Lathrop, and answer of the witness thereto.

Int. 9. Please explain what you mean by not paying any attention to jogs.

Ans. Well, if I wanted to haul half my length by any jog in Boston, I shouldn't hesitate lying there to unload or receive cargo, if it came right for the hatchway.

GEORGE SNOW.

Deposition of JOSHUA REED, a witness for the libellants and appellees, taken before Charles F. Walcott, notary public, May 9, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and if you say you are a mariner, state how long you have been, and in what capacities.

Ans. My name is Joshua Reed; my residence is 46 Green street, Boston; my age is sixty-two; my business has always been to sea; I have been to sea forty-seven years; thirty years I have been master of a vessel.

Int. 2. State what experience, if any, you have had in the coasting business.

Ans. I have had over twenty-five years' coasting business, of the time I have been to sea; my largest experience has been from the Kennebec, Penobscot, Calais, Machias, St. Johns, and Lingan.

Int. 3. Have you or not brought coal from Philadelphia or other southern ports to Boston?

Ans. Yes, sir.

Int. 4. How many cargoes?

312 Ans. I don't know that I could tell; upwards of a hundred cargoes, I suppose.

Int. 5. Do you or not know of any usage or custom, that a jog four or five feet deep in any case indicates that the descent of the bottom of the dock opposite the jog is so abrupt that a loaded vessel cannot take ground in safety, if she lies with her stern twenty-five feet below the jog?

(Objected to for form, because the witness has not been shown to be an expert, and as irrelevant.)

Ans. I do not.

Int. 6. Do you or not know of any wharf in Boston or vicinity where there are two berths; one upper, where vessels lie aground, and one lower, where they lie afloat, with a jog in the wharf, three to eight feet deep, at the head of the lower berth, where the descent from the upper berth to the lower is more abrupt than the general slope of the bottom?

Ans. I know of one—Lincoln's wharf, at the north end, where there are two berths in that way; but a vessel lies as well at one as at the other, or with her stern by the jog fifteen or twenty feet.

Int. 7. How is the bottom at Lincoln's wharf? Is there is a gradual slope from the head of the dock to the bottom? or is there a descent more or less abrupt, at the jog?

Ans. There is a gradual slope.

Int. 8. Is it usual or unusual for vessels to lie with their sterns by jogs.

(Objected to for form.)

Ans. Very common, sir, indeed.

Int. 9. How often have you lain at Lincoln's wharf?

Ans. Well, I suppose that I have lain there—I wouldn't say for certainty—but I suppose seventy-five or one hundred times at those berths.

Int. 10. Are you acquainted with Mr. Nichols, now or formerly wharfinger there?

Ans. I know him, but I am not so familiarly acquainted with him as I was with the other wharfinger.

Int. 11. How long has Mr. Nichols been wharfinger at Lincoln's wharf?

Ans. That I couldn't say; its some years since I discharged there.

313 Cross-interrogatories by John C. Dodge, esq., for respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Of what vessel are you now master?

Ans. Not any, sir.

Cross-int. 2. How long since you have been?

Ans. Two years ago; the brig "Foster."

Cross-int. 3. How long have you resided in Boston, and where did you reside before that?

Ans. I have resided in Boston ten years; till within ten years I resided in Boothbay, Maine; I was born and brought up there.

Cross-int. 4. Who has talked with you about this case?

Ans. No one, particularly; Mr. Swett, the carpenter, over at East Boston, asked me to come up here. He said he would have me notified if it was necessary; but I told him I would come up without it, and tell

my experience at sea. He was an entire stranger to me; I didn't know him.

Cross-int. 5. How long ago did Swett talk with you about it?

Ans. It was yesterday morning.

Cross-int. 6. Did you ever sound out the lower berth at Lincoln's wharf?

Ans. No, sir.

Cross-int. 7. What have you unloaded at Lincoln's wharf; what kind of cargoes?

Ans. Brick, and wood, and coal.

Cross-int. 8. Is not that a public wharf?

(Objected to as immaterial.)

Ans. Yes, sir.

Cross-int. 9. When did you last bring any coal to Boston, and to whom did you bring it?

Ans. Last, two years ago, in the brig "Foster;" discharged at the Lowell Railroad wharf.

Cross-int. 10. Do you know of a wharf in Boston at which there are two berths; one upper berth, where vessels lie aground, and a lower berth, where they lie afloat, with a jog from three to eight feet deep between them where the descent from the upper to the lower berth is not more abrupt or steep than the general slope of the bottom of the berths?

314 Ans. I don't know of one but Lincoln's; I never unloaded at any other one but Lincoln's that had any jog in it. (To question repeated:) I don't know of any one but Lincoln's; I never unloaded at any other one that had any jog in it; I have unloaded at almost every wharf from Gray's wharf to South Boston bridge, but they have not jogs in them.

Further interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 12. Is or not the descent at the jog at Lincoln's wharf, from the upper to the lower berth, more abrupt than the general slope of the bottom of the dock?

Ans. Not that I know of, sir.

Int. 13. Please explain what you supposed the tenth cross-interrogatory to ask you.

(Objected to, the tenth cross-interrogatory being perfectly plain.)

Ans. Well, I supposed that you mean that the bottom from the first berth would be more descending than the upper berth; but it is not so at Lincoln's wharf; that dock is on a gradual slope from the top to the bottom.

Int. 14. Since you ceased to be master, what have you been doing.

Ans. Piloting.

JOSHUA REED.

315 Deposition of ALEXANDER HODGDON, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 9, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and if you have been a mariner, state how long, and in what capacities.

Ans. Alexander Hodgdon; Somerville, Mass.; forty-seven years of age; I am in a store on State street, in the firm of Richards, Adams & Company, groceries and ship chandlery; I followed the sea thirty-four or thirty-five years; I commenced when I was eleven years of age, and followed it right along till within five years; I have been master of a vessel fifteen or sixteen years; the other part of the time before the mast and mate.

Int. 2. During that time how much did you sail in and out of the port of Boston?

Ans. Well, I think I've been in and out of Boston once, and most of the time twice, a year, during this time, except one year, when I was in the "Pacific." Some years I have been in Boston a dozen times a year, but perhaps the next year I would be here only once or twice. I have sailed to and from Boston more than any other port in the United States—in the West India, European, and coasting trade.

Int. 3. Do you know of any custom or usage that a jog in a wharf, four or five feet in depth, indicates that a loaded vessel cannot take ground in safety, if she lies with her stern twenty-five feet below the jog?

(Objected to as immaterial and irrelevant, and for form.)

Ans. Well, I've hauled in where there have been jogs, and laid out by them.

Int. 4. Do you or not know of any custom or usage to have the bottom, opposite a jog four or five feet deep, so dredged that a loaded vessel cannot ground there in safety?

316 (Objected to, as last.)

Ans. I have always supposed the bottom to be a gradual descent.

Cross-interrogatories by John C. Dodge, esq., for respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Your firm sold goods to be used in repairing the "Bowdoin," did it not?"

Ans. I can't say whether they did or not—not at present.

Cross-int. 2. How long have you known Mr. Sawyer?

Ans. Well, I've known Captain Sawyer some ten or fifteen years.

Cross-int. 3. Have you sailed for him?

Ans. No, sir.

Cross-int. 4. He buys goods of your firm, does he not?

Ans. He has had some paints, and I don't know but he has had some other goods.

ALEXANDER HODGDON.

Deposition of HORATIO N. PLUMMER, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 9, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and if you have been a mariner, state when, for how long, and in what capacities.

Ans. Horatio N. Plummer; age is fifty-two; I reside at Cambridge; my occupation is ship grocer and chandler, in Boston, firm of H. N. & E. L. Plummer; I have followed the sea for upwards of thirty years; I have been in all capacities up to master; I was master twenty-five years.

Int. 2. When did you cease to follow the sea?

317 Ans. In 1862—the latter part of 1862.

Int. 3. State what experience, if any, you have had in the coasting business.

Ans. I have been a-coasting twelve years and more, from the head of the Bay of Fundy to Texas, all along the coast, about every port, carrying about every kind of article that we handle here—all descriptions of lumber, coal, cotton, sugar, and molasses, and cargoes from the Bay of Fundy, of plaster generally.

Int. 4. Have you or not brought coal from Philadelphia or other southern ports to Boston?

Ans. I have.

Int. 5. How many cargoes?

Ans. Well, really, I couldn't tell; perhaps fifty cargoes. That might be too many. I have carried a good many; I couldn't tell exactly.

Int. 6. Do you or not know of any usage or custom that a jog four or five feet deep in any case indicates that the descent of the bottom of the dock, opposite the jog, is so abrupt that a loaded vessel cannot take ground in safety if she lies with her stern twenty-five feet below the jog?

(Objected to for form, because the witness has not been shown to be an expert, and as irrelevant.)

Ans. Figure it right down to that, if that's the point, I do not know of a jog that the custom would indicate that there was any abruptness in the bottom. If I should put it in my own way, I don't know of a jog that any captain would hesitate in hauling to, or laying his vessel by part ways, if he was ordered to by the wharfinger, and there was no indication or mark of danger on the wharf. [I have known dangers on the bottom at wharfs, and seen them marked "danger;" one in Machias. The wharfinger, generally, in all the cases in my experience, tells the captain, "There is a rock here. The bottom is bad. You musn't go here," etc.]

(Part in brackets objected to as irresponsive and immaterial, by Mr. Dodge.)

Int. 7. Have you or not known of instances of wharfs being marked "dangers," when the bottom is in a dangerous condition?

Ans. I have.

318 Int. 8. Is it or not usual for the wharfinger to notify the master when the bottom is in a dangerous condition?

(Objected to, the witness not having been shown to be an expert, and for form.)

Ans. It is usually the case that the wharfinger notifies the captain when there is danger at the wharfs he is ordered to. That is my experience.

Int. 9. Do you or not know of any wharf in Boston or vicinity where there are two berths, one upper where vessels lie aground, and one lower where they lie afloat, with a jog in the wharf three to eight feet deep, at the head of the lower berth, where the descent from the upper to the lower berth is more abrupt than the general slope of the bottom?

Ans. Well, I don't know of one where it is more abrupt than the lower one. I understand that it goes off gradually from the upper berth clear down to the lower one.

Cross-interrogatories by John C. Dodge, esq., for the respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Do you or not know of any wharf in Boston or vicinity

where there are two berths, one upper where vessels lie aground, and one lower where they lie afloat, with a jog in the wharf three to eight feet deep, at the head of the lower berth, where the descent from the upper to the lower berth is not more abrupt than the general slope of the bottom?

(Objected to as tending to mislead, and as intended to mislead.)

Ans. There seems to be something about that I don't exactly understand. Wasn't that the same question that I was asked before? Was the "not" in the question before? (To question repeated.) It is making us know a good deal if we know all that. I don't know as I could answer that correctly. I know wharfs that would pretty nearly answer that description. I think I have answered it about as far as I can.

Cross-int. 2. Please answer whether you do or do not know of such a case as supposed in the last question.

Ans. That requires an answer that would answer the question. I thought that I had gone as far with my answer as I could understandingly, and this new question appears to demand an answer to the other.

319 (To question repeated, the witness makes the same answer as above.)

Cross-int. 3. Do you decline making any further answer to the question?

Ans. I have answered all that I know in the matter; I don't know as I can say any further than I know; I do not mean to say more than I know.

H. N. PLUMMER.

Deposition of WESLEY STEELMAN, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 11, 1868.

Interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. State your name, age, residence, and occupation; and if a mariner, how long you have been such, and in what capacities.

Ans. Wesley Steelman; age, thirty-two years; Seaville, Cape May County, New Jersey; sea captain is now my occupation. I have been a mariner ever since I was thirteen years old; I have been master ever since 1854, tho', since that time, I have been ashore two or three months at a time; since 1854, I have been mate some little; since I first went to sea, I have acted in all capacities up to master.

Int. 2. What experience, if any, have you had in the coasting business?

Ans. Well, sir, I have had some ten years' experience in the coasting business; mostly, between Philadelphia and Boston, in the coal business.

Int. 3. How many cargoes of coal, if any, have you brought to Boston?

Ans. Well, sir, I couldn't exactly tell you how many; but I can say this—nine last year, and two this season; I can come at that right square, but any further back I couldn't say.

320 Int. 4. Can you give an estimate about how many cargoes of coal in all you have brought to Boston?

Ans. Well, about sixty; that is, as mate and master.

Int 5. Have these cargoes been landed on one wharf in Boston, or at different wharfs?

Ans. At different wharfs.

Int. 6. Do you or not know of any custom or usage that a jog in a wharf, four or five feet deep, indicates in any case that the condition of the bottom of the dock is such that a loaded vessel cannot take ground in safety, if she lies with her stern twenty-five feet by the jog?

(Objected to as immaterial and irrelevant.)

Ans. I do not know of any such case.

Int. 7. Did you or not ever hear of any such custom or usage?

(Objected to as last.)

Ans. No, sir; I never heard of any such case—that a master of a vessel had to pay for his damages in such a case. I've been at wharfs where the owner of the wharf, or the man who leased the wharf, told me where to haul my vessel, and if she took damage he would be responsible; that was at Charles Darrow's, South Boston, through two bridges; there is no jog in his wharf, but that is his practice.

Int. 8. Is it or not customary for the master of a vessel to take up her martingale unless he is expressly ordered to?

Ans. No, sir; it is not a customary practice.

Int. 9. Is it or not customary for a vessel, when lying at a wharf battened with spiles, to have a fore-and-aft fender against the spiles, and an up-and-down fender between the vessel and the fore-and-aft fender?

Ans. No, sir; it is not a customary rule to have anything more than a fore-and-aft fender.

Int. 10. For what purpose is the fore-and-aft fender?

Ans. Merely to keep the vessel from chafing against the piling of the wharf—from chafing the paint off.

321 Cross-interrogatories by John C. Dodge, esq., for the respondents and appellants, and answers of the witness thereto.

Cross-int. 1. Who first told you about this case?

Ans. Well, sir, I couldn't tell you as anybody; I was called on this morning to come up and give my testimony in regard to the usage of my business, and I can't give the name of a gentleman or party who asked me to come, for I don't know their name.

Cross-int. 2. Is he here now?

Ans. No, sir; he is not in the room.

(Captain Sawyer, one of the libellants, was in the room.)

Cross-int. 3. Where did you see him?

Ans. I met him in State street.

Cross-int. 4. Did you ever see him before?

Ans. Yes, sir.

Cross-int. 5. When, where, and how often?

Ans. I've seen the man, now in the neighborhood of a year, perhaps once in five weeks, when I have happened to be in Boston; he is a sea captain, and me and him gets together in Ray & Walter's commission office, but I don't know his name.

Cross-int. 6. Of what vessel is he now master?

Ans. That I couldn't tell you, sir.

Cross-int. 7. Of what vessel has he ever been master?

Ans. That I don't know, sir.

Cross-int. 8. Where does he belong?

Ans. Well, that I couldn't tell you; somewheres to the eastward.

Cross-int. 9. Did he tell you he had given a deposition in this case?

Ans. No, sir, he did not; he merely asked me if I wouldn't go up with him to a court-room and just state to the gentlemen there what my experience was in this coasting coal-trade business.

Cross-int. 10. At what wharfs have you unloaded in Boston mostly?

Ans. I've unloaded at Knight's wharf, in Boston; Pike's wharf, Roxbury; Charles Darrow's wharf, South Boston; Mr. Keefe's wharf, South Boston; Bay State Iron Works, South Boston; Boswell & Hammond's, at the south end; Howard & Snelling's, at the north end. I have
322 been at numbers of other wharfs, but I can't think of their names; I've been at East Boston, and various other places all through the city, but I've forgotten the names, it's been so long.

Cross int. 11. Do you know of a wharf in Boston or vicinity at which there are two berths, one a shoal-water berth, at which vessels lie aground to unload, and the other a deep-water berth, where they lie afloat to unload, with a jog from three to eight feet deep between them, where the descent from the upper to the lower berth is not more steep or abrupt than the general slope or inclination of the bottom of the berths?

(Objected to as tending and intended to mislead.)

Ans. I don't know of any such place in the city of Boston that ever came under my notice.

Cross-int. 12. When you are directed to haul your vessel to a certain place, and you find that in order to get there, or to lie there safely, it is necessary to come up with the martingale, you do it, do you not?

(Objected to as incompetent and immaterial.)

Ans. If the wharfinger instructs me to do so, I do. (To question repeated.) Not without orders from the wharfinger. [I consider it's his place to give me a berth, and if he can't give me a berth without coming up with my gear, it's his place to give me instructions.] I once had to come up with my martingale in East Boston, by order of a policeman, to keep the martingale and bobstays from injuring the ladies' bonnets, as the jib-boom extended right over the street.

(Part in brackets objected to by Mr. Dodge as irresponsive.)

Cross-int. 13. Was there ever a case in which you were directed to come to a certain place, and found that you could not get there, or could not lie there safely, without coming up with your martingale, and you refused or neglected to come up with it; if so, what case was it, and at what wharf?

(Objected to as incompetent and immaterial and for form.)

Ans. There never was one; I always complied with the wharfinger's advice.

Cross-int. 14. Do you know of any such case, of your own knowledge?

Ans. No, sir; I don't.

323 Further direct interrogatories by Mr. Lathrop, and answers of the witness thereto.

Int. 11. In your answer to the eleventh cross-interrogatory you say that you don't know any such place in Boston. Please state what you mean by this.

(Objected to, the question referred to being plain and having been distinctly answered.)

Ans. Well, I mean simply this, that I was never to a place where there was any such water or wharfs, that came under my notice, as that question was put to me. I have been to wharfs where there was six to ten feet jogs, and varying with water from one jog to the other, where the bottom was regular. Vessels could haul up without meeting any accident in any water. [There are never no obstructions left there with-

out by carelessness of the owner of the wharf. The bottom was level.] (Part in brackets objected to by Mr. Dodge, witness not being shown to be an expert, and as not responsive.)

Int. 12. Do you or not know of any place in the city of Boston, or vicinity, where the bottom at the jog is so abrupt that a vessel could not lie in safety with her stern twenty-five feet by the jog?

(Objected to for form.)

Ans. No, sir.

Int. 13. Did you or not ever take up your martingale at a wharf without positive instructions from the wharfinger, except when the policeman told you to, as you have stated?

(Objected to as immaterial, and for form.)

Ans. No, sir; I never did.

Further cross-interrogatories by Mr. Dodge, and answers of the witness thereto.

Cross-int. 15. What wharf or wharfs in Boston, to which you have been, do you refer to in answer to the eleventh direct interrogatory?

(Objected to as incompetent and immaterial, the question having been answered.)

Ans. Well, Mr. Batchelder's wharf, at South Boston, for one. There is a wharf up through seven bridges, at the North End. I forget
324 the man's name—I know where the wharf is—that's got a jog in it. Mr. Keefe's wharf, over in South Boston, has a curve in it, or jog, whichever you please to call it; a very short bend in the dock, so that we have to breast our vessels off for some distance. That's all I think of. I have been at other wharfs, but I don't know the men's names, and I don't want to name any place without giving the name, as I suppose you might want to go and see these wharfs. A man can't keep these names in his mind all the time.

Cross-int. 16. How deep is the jog in each of the cases you have named?

Ans. Well, I couldn't give you a definite answer on that. It might be three feet, five feet, or ten. I don't watch these things close enough to bear them right in my mind to a distance.

Cross-int. 17. How deep is the water above and below the jog at low water in each of the cases you have mentioned?

Ans. In some cases there is none at all: just a level bottom; in some there might be two or three feet. A vessel would naturally settle down in the mud, and make a little bed there.

Cross-int. 18. Then in each of the cases you have mentioned vessels lie aground to unload in both berths; that is, in the berth above and the berth below the jog?

Ans. Well, in some places they will, and in some they won't. I have been to Batchelder's wharf, and unloaded to an end-berth afloat; and I've been in the slip where I've grounded in the dock with the jog in it, in both places; where they take out coal in the slip where the jog is I've laid aground. The wharf at the North End, vessels do lay aground at low water in these berths, but the bottom is level. At Keefe's wharf there is a berth and a half that we have to shift into. We lie aground there.

CAPT. WESLEY STEELMAN.

325 Deposition of MOSES B. TOWER, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, May 11, 1868.

Interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto. (Direct examination, de bene.)

Int. 1. Please state your name, age, residence, and occupation; and how long have you been engaged in the same?

Ans. Moses B. Tower; East Boston; fifty three years of age; I have followed the sea the last ten years, more particularly as agent for the Boston and New York underwriters. For fifteen years before the ten years spoken of above, I followed the sea; and, during these ten years, I have followed the sea, more or less, not all the time, as general agent of N. Y. and Boston underwriters.

Int. 2. State what your business has been, as agent of the underwriters.

Ans. Attend to saving shipwrecked vessels and cargoes, settling damages, attending to reshipping and discharging cargoes.

Int. 3. During these ten years, how extensive has been your experience in wrecked vessels?

Ans. Well, I've been a large portion of the time engaged in it, particularly in the winter season; had to do with all sizes, from a sloop to the Great Eastern.

Int. 4. During the fifteen years that you followed the seas, in what capacities did you serve?

Ans. Coasting, mostly; master most of the time.

Int. 5. From and to what ports did you sail?

Ans. Well, various ports; Boston to Norfolk, New York, New Haven, Belfast, Portland.

Int. 6. Did you or not see the schooner "Bowdoin" at Oakman & Eldridge's dock, Charlestown, in the latter part of October, 1866?

Ans. I did.

326 Int. 7. Describe the position of the vessel, in respect to the wharf, at the time.

Ans. She lay starboard side to the wharf, heeled off, head up the dock, purchases out ahead, partly discharged; had some water in her; badly strained, amidships particularly.

Int. 8. How much heeled off was she?

Ans. I should think, three or four streaks.

Int. 9. What, in your judgment, was the cause of her heeling off?

(Objected to, the witness not shown to have adequate information in this case.)

Ans. She appeared to rest on a pile of coal amidships; it was a little forward of the mainmast where the worst strain appeared to be.

Int. 10. Did you or not see a jog in the wharf?

Ans. Yes, sir.

Int. 11. How far, if at all, did the vessel extend below this jog?

Ans. I didn't measure; I should judge, her stern projected by fifteen to twenty feet.

Int. 12. How far was the side of the vessel, just above the jog, from the wharf?

Ans. As she was heeled, her rail was much further than the bilge; I should think her bilge, as near as I could recollect, was three or four feet. I didn't measure any of the distances.

Int. 13. Did you or not see anything in the position of the vessel to indicate that she had not been placed parallel to the wharf, when she hauled in?

Ans. She was nearly on a parallel line with the wharf; her stern was off a trifle the most. Well, if she had been parallel with the wharf when she hauled in, grounding on the pile of coal would have had a tendency to throw her off; that would be the natural tendency of grounding on the starboard bilge.

Int. 14. You say in your last answer, she was nearly on a parallel line with the wharf, her stern was off a trifle the most. Do you mean that she was in that position when you saw her the time you have been speaking about, or when?

Ans. At the time that I was speaking about; it was then about low water.

Int. 15. Suppose the "Bowdoin" when she hauled in, had hauled
327 alongside the wharf with her bow in the keel track, and her side parallel with the wharf, and in grounding had struck her starboard bilge on the coal you have mentioned, would this or not, in your judgment, have had the effect of heeling her off in the position you found her in, the time you have mentioned?

(Objected to for form.)

Ans. I think it would.

Cross-interrogatories by John C. Dodge, esq., for respondents and appellants, and answers of the witness thereto.

Cross-int. 1. At what time of day was it you were at Oakman & Eldridge's wharf?

Ans. It was in the afternoon, after twelve; the particular hour I could not tell now.

Cross-int. 2. Can you not tell nearer than to say it was after twelve o'clock?

Ans. Well, my impression is that it was between two and four, now; I didn't make any particular record of it at the time.

Cross-int. 3. Are you familiar with that wharf and dock?

Ans. I have not been on it many times; twice, I think, while this vessel lay there.

Cross-int. 4. How often before and since that time?

Ans. To my recollection, I have only been there two other times.

Cross-int. 5. The time you have been speaking of was the first time you were there, while the vessel was there, was it not?

Ans. Yes, sir.

Cross-int. 6. How long were you there at that time?

Ans. I think I stopped about an hour.

Cross-int. 7. When were you there next time? How many days after the first visit.

Ans. Some three or four days after, I think.

Cross-int. 8. Who requested you to go there the first time?

Ans. General Tyler thought I had better go over and see what I could do for the captain; the captain was there noting his protest; that's the way we came to speak about it.

328 Cross-int. 9. Do you remember how deep that jog is of which you have spoken?

Ans. I didn't take any measurements.

Cross-int. 10. Have you any memory about its depth?

Ans. I should think it was not less than five, nor over fifteen; I didn't measure nor look at the wharf, particularly.

Cross-int. 11. Is that as near as you can state?

Ans. Yes, sir.

Cross-int. 12. How do you know there was some water in the vessel?

Ans. I could see it aft.

Cross-int. 13. Where did you go to see it?

Ans. I could see it from the after part of the main hatch, looking down; in the cabin; I mean underneath the cabin; the vessel lay pitched by the stern, on an incline, so that the water run aft; there was none in forward.

Cross-int. 14. Who was with you when you were in the cabin?

Ans. I met Captain Judah Baker there; he was with me when I went aboard there; I took no one with me, and knew no one aboard; I went there to examine the vessel—to see about getting her up.

Cross-int. 15. How do you know there was none in forward?

Ans. I couldn't see any; I didn't see any.

Cross-int. 16. Did you go into the hold of the vessel?

Ans. Yes, sir.

Cross-int. 17. Did you go down into the dock?

Ans. I did not.

Cross-int. 18. Did you go down below the cap-sill of the wharf, except into the vessel?

Ans. No, excepting aboard the vessel.

Cross-int. 19. At what time of day did you see the captain at Tyler's?

Ans. I can't give the exact hour.

Cross-int. 20. As nearly as you can state it?

Ans. I think it was before twelve o'clock.

Cross-int. 21. How much before?

Ans. I made no record of the time.

329 Cross-int. 22. Can you state no nearer than to say it was before twelve o'clock?

Ans. Between ten and twelve; sometime between the hours of ten and twelve.

Cross-int. 23. That is the nearest that you can state?

Ans. It is.

Cross-int. 24. Did you talk with the captain at Tyler's?

Ans. I had some conversation with him in relation to the situation of the vessel.

Cross-int. 25. With whom have you talked about this matter, from the day you were over there until to-day?

Ans. Mr. Swett and Mr. Lathrop are all I can name now.

Cross-int. 26. What Mr. Swett is that; the ship-carpenter of East Boston?

Ans. Shipwright and calker; Swett & Kilbourn, now, I think.

Cross-int. 27. How many times have you talked with him, and when?

Ans. Once; that was last Friday, I think.

Cross-int. 28. Then from the day you were there until and since last Friday you have not talked about it, so far as you remember?

Ans. When she was undergoing repairs, we might have talked some about it; she was in the dock (repairing, at any rate they did some work on her,) close by my house; I was down there most every day when she was in dock; I had no particular conversation about this matter; I know Mr. Swett, and most of the workmen, and was down at the dock most every day; it is close to my house.

Cross-int. 29. At what time of tide was it the second time you were there?

Ans. It was about half tide.

M. B. TOWER.

330 Deposition of STILLMAN E. BRYANT, a witness for libellants, taken before Charles F. Walcott, notary public, July 14, A. D. 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. State your name, and whether you have before testified in this case.

Ans. Stillman E. Bryant; I have.

Int. 2. Have you followed the seas, and if so, for how long and in what capacities?

Ans. I have; for about 22 years; before the mast, second mate, and as chief officer.

Int. 3. How much, if any, have you been in the coasting trade?

Ans. Somewhere about ten years.

Int. 4. Are you or not now connected with the "Bowdoin?"

Ans. I am not.

Int. 5. When did you leave her?

Ans. I left her about eleven months ago.

Int. 6. In your previous deposition you testified in regard to a conversation with Captain Colman, on the Saturday morning before you hauled into the dock, at the time you say he pointed across to the staging, and said your main hatch was to be abreast that staging. Will you please state whether any one was present at that conversation except you and Captain Colman?

(Objected to as informing witness of what he before testified.)

Ans. There was not.

Int. 7. (De bene.) State whether or not Captain Colman, at this or at any time, said anything to you about hauling the after part of your main hatch opposite a post in the bulkhead.

(Objected to as leading.)

Ans. He did not.

Int. 8. (De bene.) State whether or not Captain Colman at this or at any other time told you that when the stage on the top of the bulkhead was swung square you would be about right.

(Objected to as leading.)

331 Ans. No, sir; he never told me so; he told me to haul the main hatch abreast of that staging; that's all he told me.

Int. 9. (De bene.) State whether or not Captain Colman, at this or at any other time, told you not to be afraid of going ahead, that your jibboom would probably lie over the wall, and that you could slack up your head gear.

(Objected to as leading.)

Ans. He did not.

Int. 10. (De bene.) State whether or not, on the Monday after the accident, you said to Captain Colman that you told Captain Randall that the vessel was not so far ahead as Captain Colman told you.

(Objected to as leading.)

Ans. I did not.

Int. 11. On Sunday, when you hauled in, who, if any one, helped you haul to your berth?

Ans. There was two men; myself, Captain Randall, and Mr. Curren.

Int. 12. Do you mean two men besides Captain Randall, Mr. Curren, and yourself?

Ans. I do.

Int. 13. What, if anything, did these two men do?

Ans. They helped me on the forecastle for about five or ten minutes, to heave past a schooner, and then they went aboard that schooner.

Int. 14. Where was this schooner?

Ans. She was at the end of the dock; we had to heave past her.

Int. 15. When did these men get aboard your vessel?

Ans. When we hauled up to her; her stern was out of the dock, and we had to break round to get in.

Int. 16. Did or not either of these men remain on your vessel until you got to your berth?

Ans. They did not.

Int. 17. Did or not these men, or either of them, have any conversation with you or with Captain Randall, while they were on your vessel?

Ans. They had none with me, and none with him, that I know of.

Int. 18. How near were you to them while they were on your vessel?

Ans. We were heaving on the capstan; they had hold of a cap-
332 stan bar; (one of them had hold of a capstan bar, and the other was taking a turn 'round the capstan;) I had hold of another bar.

Int. 19. When you hauled into the wharf on Sunday, did you or not, put fenders between you and the wharf; and if so, what kind?

Ans. I did; fore-and-aft fenders.

Int. 20. (De bene.) That Sunday afternoon, after you hauled in, did you, or not, have any conversation with any one on the wharf, or in a boat near your vessel, about the berth you were lying in?

Ans. I did not.

Int. 21. (De bene.) Did, or not, any one that Sunday afternoon say to you that you had to go forward to get in the upper berth, or haul aft to get in the lower berth, or any words to that effect?

(Objected to as leading.)

Ans. There did not.

Int. 22. (De bene.) Did or not any one that Sunday afternoon say to you, "If you let your vessel ground there, you'll certainly hurt her," or words to that effect?

(Objected to as leading.)

Ans. There was not any such thing said.

Int. 23. (De bene.) Did you or not, say to any man that Sunday afternoon: "I told the captain that we were not as far forward as the wharfinger told us to go, but he said she was in her berth, and when it suits him it suits me," or words to that effect?

(Objected to as leading.)

Ans. I did not say any such thing.

Int. 24. (De bene.) Did or not any one that Sunday afternoon say to you: "You'll find that, if you let your vessel ground there, she will certainly get injured," or words to that effect?

(Objected to as last.)

Ans. There was not anything said of that kind.

Int. 25. Where were you that Sunday afternoon, after you hauled your vessel into her berth?

Ans. I was aboard the vessel.

Int. 26. How long did you stay on board the vessel?

Ans. Till supper time.

Int. 27. Did you, or not, go into any rum-shop that afternoon?

Ans. I did not.

333 Int. 28. Was or not the captain aboard the vessel that afternoon, after you hauled in up to the time you went to supper?

(Objected to, as leading.)

Ans. He was.

Int. 29. (De bene.) On Monday morning after the accident, did or not Captain Colman say to you: "You havn't gone up where I told you; had you, the vessel would not be hurted," or words to that effect?

(Objected to as last.)

Ans. He did not,

Int. 30. (De bene.) Did you or not on Monday morning say to Captain Colman, "I told the captain that we were not as far up as you directed me to go, so if the vessel is hurted it ain't my fault," or words to that effect?

(Objected to as last.)

Ans. I did not say anything of the kind.

Int. 31. (De bene.) Did you or not on that Monday morning say to Joseph Burnett, the stevedore, or to any one, that the captain came down on Sunday and ordered you to haul the vessel astern, or words to that effect?

(Objected to as last.)

Ans. I did not.

Int. 32. Where did you sleep on the Sunday night after you hauled in?

Ans. I slept aboard the vessel.

Int. 33. What was the first you knew of the vessel being injured?

Ans. The captain sang out to me early in the morning.

Int. 34. (De bene.) During the week prior to the accident, were you or not in Mr. Oakman's office, and if so, when?

Ans. I was not.

Int. 35. When, if at all, did you first have any conversation with Mr. Oakman?

Ans. When we were about half discharged.

Int. 36. Was this before or after the accident?

Ans. After the accident.

Int. 37. (De bene.) Did or not Mr. Oakman, or any one in his employ, ever say to you, "You go down and see just where the
334 "Daybreak" lies, as we are going to use the same stage and the same engine and everything precisely as it is working there," or words to that effect?

(Objected to as leading.)

Ans. No, sir.

Int. 38. (De bene.) Did or not Mr. Oakman, or any one in his employ, say to you that you were to bring your main hatch so as to use the rigging precisely as it was being used on the "Daybreak;" or words to that effect?

(Objected to as leading.)

Ans. There did not.

Int. 39. (De bene.) On that Monday morning did you or not say to Mr. Oakman that you told the captain as you were told, but that the captain would have his own way about it?

(Objected to as last.)

Ans. I did not.

Int. 40. After the accident and before the vessel was hauled ahead, was or not part of the coal discharged from the main hatch?

Ans. It was.

Int. 41. At the time you hauled your vessel into her berth on Sunday, how was she laid as to being angling with the wharf or parallel to it?

Ans. She was parallel to it.

Int. 42. If the martingale had not been taken up before the vessel was hauled ahead, how would it have come with respect to the wall at the head of the dock?

Ans. It would have come over the wall.

Int. 43. How far over?

Ans. About two feet.

Int. 44. How far below the jog was the stern-post of the "Bowdoin" when she was hauled ahead?

Ans. I should think eight or ten feet.

335 Cross-interrogatories by John C. Dodge, esq., in behalf of the respondents, and answers of the witness thereto.

Cross-int. 1. How long have you been first officer of a vessel?

Ans. About eleven years.

Cross-int. 2. Of what vessel?

Ans. In the clipper ship "Challenger," in the ship "John U. Brookman," and the ships "Southern Chief" and "Twilight" and "Pepperell;" the bark "William Henry;" the brigs "L. P. Snow" and "Lenna Thurlow;" the schooner "William Arthur," the schooner "Carroll," and schooner "Young America," and the "Bowdoin."

Cross-int. 3. When did you first go first officer of a vessel, and of what vessel?

Ans. The bark "William Henry;" I think it was in '56—between '56 and '57.

Cross-int. 4. Who was master of her; from what port did she sail, and what was the voyage?

Ans. Captain William Young; New York; for Esmeralda, on the Spanish Main.

Cross-int. 5. Are you now first officer of a vessel; and if yes, what vessel?

Ans. The schooner "Carroll."

Cross-int. 6. How large is she, and where is she, and who is master of her?

Ans. One hundred and fifteen tons; she is bound from Machias to to New York; C. Bancroft is master. I was mate of her until I started to come up here; I wish to make that correction.

Cross-int. 7. Where does she belong?

Ans. In Machias.

Cross-int. 8. Have you left her now?

Ans. I have.

Cross-int. 9. Who is second mate of her?

Ans. His son, C. Bancroft.

Cross-int. 10. How long have you been in her as chief mate?

Ans. Four months.

Cross-int. 11. Of what vessel were you first mate next before you were in the "Carroll?"

336 Ans. The brig "Lenna Thurlow."

Cross-int. 12. How large was she, and how long were you in her as first mate?

Ans. She is between three and four hundred tons; I was in her six months, to a day.

Cross-int. 13. Of what vessel next before that were you first mate?

Ans. Of the "Bowdoin."

Cross-int. 14. How long were you first mate of the "Bowdoin?"

Ans. About three weeks.

Cross-int. 15. How long were you second mate of her?

Ans. About two months.

Cross-int. 16. Where was she when you became first mate of her?

Ans. She lay right off India wharf, in Boston.

Cross-int. 17. How long was that before she hauled into Mr. Oakman's wharf?

Ans. One day, I believe.

Cross-int. 18. How long before that Sunday when she got damaged?

Ans. About a week.

Cross-int. 19. Of what other vessel than the "Bowdoin" have you been second mate since you first were first mate?

Ans. I have been in a number; in the ship "Cynosure," and the ship "Hellespont," and the ship "Helias;" that's about all that I can recollect, as near *us* I can make out.

Cross-int. 20. How long in each of these vessels?

Ans. Well, I've almost forgotton, it's been so long. I know the voyages I went in them.

Cross-int. 21. When did you become first mate of the "Lenna Thurlow?"

Ans. The fifteenth day of July last; I mean a year ago.

Cross-int. 22. What were you doing from the time you left the "Bowdoin" until you became first mate of the "Lenna Thurlow?"

Ans. I was on a visit home, at Machias. I wish to correct that—I was four months of that time in the schooner "William Arthur."

Cross-int. 23. What were you in her, and when did you begin to go in her, and how large is she?

Ans. First mate; I began to go in her about the 24th day of November; she is one hundred and thirty-two tons.

337 Cross-int. 24. How long was it from the time you were last second mate of a vessel before you became second mate of the "Bowdoin"?

Ans. I'll try to remember. About a year, as near as I can judge.

Cross-int. 25. Have Captain W. H. Randall, and Mr. Sawyer, the libellant, been present here while you have been giving your testimony to-day.

Ans. Most of the time.

Cross-int. 26. Not all.

Ans. I don't know that they have been here all the time.

Cross-int. 27. Do you know that they have not been here all the time?

Ans. I wasn't paying much attention to them; I was paying most attention to this.

Cross-int. 28. How many times have they, or either of them, talked with you about this case, or your testimony in it?

Ans. They never have said anything to me before coming down here this morning.

Cross-int. 29. Do you mean coming down to this office?

Ans. I do.

Cross-int. 30. Did you and they come down here together?

Ans. Yes, sir; as far as the office.

Cross-int. 31. When did you come to Boston?

Ans. This morning.

Cross-int. 32. Did they or either of them come with you?

Ans. Mr. Sawyer came up on the boat when I did.

Cross-int. 33. Boat from where; and what boat; and when did she come?

Ans. From Portland; the "John Brooks;" we got in about four o'clock this morning.

Cross-int. 34. How long had you been in Portland; and did you see and converse with Mr. Sawyer there?

Ans. Four days; I did.

Cross-int. 35. How many times and how long each time did you see and converse with him?

Ans. I saw him half a dozen times every day, but did not talk with him much of any, of much account.

338 Cross-int. 36. And you swear that you did not at any time converse with him about this case, or your testimony in it?

(Objected to for form.)

Ans. I did not.

Cross-int. 37. How many times, and when have you seen Randall, since you left the "Bowdoin," before this morning?

Ans. I saw him once in Machias; it was about the middle of June a year ago.

Cross-int. 38. How long were you with him at that time.

Ans. About fifteen minutes.

Cross-int. 39. Did you converse with him?

Ans. I did.

Cross-int. 40. And you swear you did not converse with him about this case or your testimony in it?

(Objected to for form.)

Ans. I did not.

Cross-int. 41. Nor mention it?

(Objected to as last.)

Ans. Nor mention it.

Cross-int. 42. Have you heard your former deposition in this case or any part of it read?

Ans. I have not.

Cross-int. 43. Have you read it or any part of it?

Ans. I have not.

Cross-int. 44. Have you talked with any one about this case or your testimony from the time you left the "Bowdoin" until this morning?

Ans. I have not to any interested parties.

Cross-int. 45. With any one, and if yes, with whom?

Ans. Yes; with Captain Andrews, of the schooner "William Arthur."

Cross-int. 46. Who is he, and where is he, and when and how often did you talk with him?

Ans. I don't know where he is now, I haven't seen him for some time; I don't recollect ever speaking of it to him but once.

Cross-int. 47. Have you read or heard read the testimony of any witness in this case or any part of the testimony of any witness?

Ans. I have not.

339 Cross-int. 48. Have you been told what any witness has testified?

Ans. I have not.

Cross-int. 49. Did not Mr. Lathrop tell you what some witnesses or witness had testified?

Ans. No, sir.

Cross-int. 50. How soon after your vessel was hauled in on Sunday, did you leave her?

Ans. I guess about six o'clock.

Cross-int. 51. At what time did you haul in?

Ans. About two o'clock.

Cross-int. 52. Do you swear that from that time until six or about six, your were on board her?

Ans. I was.

Cross-int. 53. In what part of her?

Ans. 'Round the decks and in the cabin.

Cross-int. 54. After leaving her about six, when did you return to her?

Ans. About twenty minutes past six.

Cross-int. 55. How long did you remain there then?

Ans. All night.

Cross-int. 56. Then you say you did not again leave her until morning?

Ans. I did not leave her.

Cross-int. 57. At what time did you turn in?

Ans. Well, about dark. I don't know what time it was; about dark.

Cross-int. 58. What was Captain Randall doing when you turned in?

Ans. I don't know what he was doing.

Cross-int. 59. Then you did not see him at that time?

(Objected to for form.)

Ans. No, I didn't see him when I went to bed.

Cross-int. 60. At what time did you have supper that night?

Ans. About six o'clock.

Cross-int. 61. At what time did you have dinner?

Ans. At twelve.

Cross-int. 62. Before you hauled in?

Ans. Yes; I had my dinner before we hauled in.

340 Cross-int. 63. Where did you get your dinner, and where your supper?

Ans. At a restaurant right close to the navy yard gate, where I got all my meals.

Cross-int. 64. Did the captain go to supper with you?

Ans. No; he didn't go up at the time I did.

Cross-int. 65. What do you mean then when you say, from the time we hauled in until we went to supper, the captain was on board the vessel?

Ans. I don't know as I said we.

Cross-int. 66. What did you say?

(Objected to.)

Ans. The time that I went to supper, I think.

Cross-int. 67. Was the captain on board all the time, from the time the vessel was hauled in until you went to supper?

Ans. He was.

Cross-int. 68. Are you willing to swear to that?

Ans. I am.

Cross-int. 69. Did he not then go to dinner?

Ans. I do not know; I never asked him.

Cross-int. 70. If you do not know whether he went to dinner, how can you swear he was on board all the time?

Ans. Because me and him were writing letters, in the afternoon—the biggest part of the afternoon.

Cross-int. 71. Then you cannot swear he was on board all the time, if you do not know whether he left for dinner, can you?

Ans. I can swear that he was aboard all the afternoon, after we hauled in. I didn't take much notice of the forenoon.

Cross-int. 72. All the time after he hauled in, you swear he was on board, and most of the time writing letters?

(Objected to for form, as assuming a fact the witness has not testified to.)

Ans. Well, I should say, talking and writing letters took up the biggest part of the afternoon.

Cross-int. 73. What else did you see him do, besides write letters?

Ans. Well, after we hauled in, we went to get the fenders over, and fasts all right, before we went below. We got everything all right, as we supposed, just as we would at any dock.

341 Cross-int. 74. What else, besides getting the fenders over, and getting things right, and writing letters, did you see him do?

Ans. Well, I didn't see him do anything in particular; I know he was there, but I don't know what he done after writing his letters.

Cross-int. 75. Did he not turn in and take a nap, for a large part of the afternoon?

Ans. No, sir.

Cross-int. 76. Did he turn in for a nap at all?

Ans. Not while I was in the cabin. I don't watch him so close as that.

Cross-int. 77. Were there not more than two men came on board to help you haul in?

Ans. No, sir.

Cross-int. 78. Will you swear that there were not more than two?

Ans. Excepting this Mr. Curran, a visitor there, an acquaintance.

Cross-int. 79. Will you swear that these men were not on board more than ten minutes?

Ans. I think I said they were ten or fifteen, didn't I?

Cross-int. 80. Will you swear that they were not there more than fifteen minutes?

Ans. I will.

Cross-int. 81. How many fore-and-aft fenders did you put in?

Ans. Two.

Cross-int. 82. How long were they and how thick?

Ans. Twelve to fifteen feet long, and, I should judge, about eight or ten inches thick.

Cross-int. 83. Did you put in any others?

Ans. No. I don't recollect any more. We don't generally put in up-and-down fenders when there are piles in the wharf. We generally put up-and-down fenders inside fore-and-aft fenders, if they are required. I think we did put in some others.

Cross-int. 84. What others did you put in?

Ans. I wouldn't swear what others were put in?

Cross-int. 85. Where did you get the fenders you put in?

Ans. Aboard the vessel.

Cross-int. 86. Do you know Joseph Burnett?

Ans. I do not.

342 Cross-int. 87. At what time in the morning was it when the captain sang out to you, as you had said in answer to the thirty-third interrogatory?

Ans. About half past six, I believe, as near as I can recollect.

Cross-int. 88. Where was the captain, then?

Ans. He was in the cabin; when he sang out to me, he came to my room.

Cross-int. 89. Were you awake the night before when the captain turned in?

Ans. I won't say that I was; I don't recollect when he did turn in; the last that I saw of him he was writing?

Cross-int. 90. Did you hear any one call to the captain that morning before he called to you?

Ans. I did not.

Additional interrogatories by Mr. Lathrop for the libellants, and answers of the witness thereto.

Int. 45. Has Mr. Oakman, one of the respondents, been present during part of your examination this morning?

Ans. He was.

Int. 46. Can, or not, a person standing between the bulkhead and the cap-sill of the wharf where the accident to the "Bowdoin" happened see a person going out of the gate into the street?

(Objected to as immaterial.)

Ans. They cannot; I shouldn't think they could.

Int. 47. What, if anything, is in the way?

(Objected to as last.)

Ans. There is a large coal pile and sheds at the bulkhead that run clear up to the head of the wharf and a jog there.

STILLMAN E. BRYANT.

343 Deposition of W. H. RANDALL, a witness for libellants, taken before Charles F. Walcott, notary public, July 14 and 15, A. D. 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. State your name, and whether you have before testified in this case.

Ans. My name is W. H. Randall; I have.

Int. 2. (De bene.) At the time you were notified of the damage to your vessel on Monday morning, early, was or not the mate on board?

Ans. He was.

Int. 3. (De bene.) How do you know this?

Ans. Because I called him.

Int. 4. (De bene.) Did he or not answer?

Ans. He did.

Int. 5. (De bene.) The witness who says he called you that Monday morning, has testified that you didn't have anything to say for yourself; that you appeared confused; that you couldn't control yourself; is this or not true?

(Objected to as leading.)

Ans. It is not true, sir.

Int. 6. (De bene.) State what conversation you had with Mr. Oakman that Monday morning about the injury to your vessel.

Ans. I notified Mr. Oakman that the vessel was damaged. He came down alongside, and made this remark, that the vessel was not injured. I told him she was badly injured; I said to him, "Mr. Oakman, I advise you, as a friend, to settle it;" I told him that he could have the vessel at the figures that she cost us. He laughed, and said that he wouldn't have cared if it had broke the vessel in two in the middle; that was the reply that he made. I then told him that I should telegraph to the agent, and protest against them, (the company,) and should call a survey on my vessel, and on the dock. He told me to go ahead and do all I could; and I've done so.

Int. 7. (De bene.) State whether or not Mr. Oakman said to
344 you at any time that you ought to have got alongside the wharf, and got in some fenders.

(Objected to as leading.)

Ans. No, sir.

Int. 8. (De bene.) Did you or not at any time say to Mr. Oakman, that you didn't think it was necessary to get alongside the wharf, and put in fenders?

(Objected to as last.)

Ans. I did not.

Int. 9. How was said vessel laid at the wharf when she was hauled in on Sunday, as to being angling with the wharf or parallel to it?

Ans. She was laid parallel with the wharf, sir.

Int. 10. What fenders, if any, did you have in?

Ans. Fore-and-aft fenders.

Int. 11. (De bene.) State what reason, if any, you gave to any one on Monday for not hauling further ahead.

Ans. I don't know as I gave any reason. The reason was, I hauled as far as I was ordered to haul.

(After the first clause of this answer was taken down by the magistrate, the witness said that he didn't think he understood the question, and to the question repeated gave the second clause of the answer above.)

Int. 12. (De bene.) Did you or not on Monday morning, when you were first notified of the danger your vessel was in, say that you wasn't going to haul her any further ahead to break her jib-boom?

(Objected to as leading.)

Ans. I did not.

Int. 13. At this time when you were first notified of your danger, was your vessel afloat or aground?

Ans. Aground.

Int. 14. Did you or not discharge from the main hatch before the vessel was hauled ahead?

Ans. I did, sir.

Int. 15. (De bene.) Do you or not know of any custom or usage among seafaring men, that a jog in a wharf five feet deep indicates that a loaded vessel cannot ground there in safety with her stern twenty-five feet below the jog?

(Objected to, the witness not shown to be qualified, and for form.)

345 Ans. I don't know of any such custom.

Int. 16. What stays on your vessel are attached to the martingale?

Ans. Flying-jib stay, outer-jib stay, and foretopmast stay.

Int. 17. How long is the martingale on the "Bowdoin"?

Ans. Eight feet three.

Int. 18. Is this the same you had at the time of the accident?

Ans. Just the same.

Int. 19. (De bene.) Is it or not customary for masters of coasting vessels to sound the water when hauling into a dock where they are to lie aground?

(Objected to as to fifteenth interrogatory.)

A. No, sir; it is not.

Int. 20. Is it or not customary for masters of vessels to take up their martingale, without being ordered to do so?

Ans. It is not customary, sir.

Int. 21. How did the "Bowdoin" lie at the wharf on Monday morning as to being parallel with it or angling?

Ans. She laid parallel, sir.

Int. 22. If the martingale had not been taken up when the vessel was hauled ahead, how would it have come in respect to the wall at the head of the dock?

Ans. It might have dropped short eight or ten feet. (To question repeated.) Over the wall, sir.

Int. 23. When you gave the first part of your anewer, did you or not understand the question?

Ans. I did not.

Int. 24. What did you understand it to ask?

Ans. I understood the question was how much short of the wall the martingale would have been, if it hadn't been taken up, before I was hauled ahead?

Int. 25. How far was it over the wall when the vessel was hauled ahead?

Ans. I should say between two and three feet, sir.

Int. 26. How far below the jog was the stern-post of the "Bowdoin" after she was hauled ahead?

Ans. I can't tell exactly. I should say eight or ten feet.

346 Int. 27. What was the length of your vessel's jib-boom and bowsprit at the time of the accident?

Ans. Forty feet, sir.

Int. 28. How long is your main hatch, and how long your after hatch?

Ans. The main hatch is nine feet; the after hatch is six feet and a half.

Int. 29. How far from the bow of the vessel is the fore part of the main hatch?

Ans. Seventy-two feet, I think, to the fore part of the after hatch, and forty-five feet to the fore part of the main hatch.

Int. 30. Do you know how wide your vessel is in the widest part?

Ans. Twenty-seven feet and four inches, sir.

Int. 31. How wide at the stern-post?

Ans. Twenty-three feet and seven inches.

Int. 32. Is the width at the widest part—twenty-seven feet four as you have given it—the width on the rail or where?

Ans. From outside to outside, sir.

Int. 33. What part outside?

Ans. The wales.

Int. 34. How far below the top of the rail are the wales?

Ans. I can't tell exactly. I should judge though, about four feet.

Int. 35. What difference, if any, is there in the width of the vessel at the wales, and from the outside of one rail to the outside of the other in the widest place?

Ans. Four or five inches, perhaps more.

Int. 36. What is the width of the vessel just aft the catheads?

Ans. Seventeen feet and a half, sir.

Int. 37. And what the width at the after part of the top-gallant forecastle?

Ans. Twenty-four feet, sir.

At fifteen minutes before four o'clock, p. m., the hearing was adjourned until to-morrow, July 15th, at nine o'clock, a. m., at the same place.

347 WEDNESDAY, *July* 15, A. D. 1868.

The hearing was resumed pursuant to adjournment; the parties being respectively represented by the same counsel as at the previous hearing.

Int. 38. (De bene.) Do you know how many jogs there are on the west side of Damon's wharf, Charlestown, and the depths of them? if so, state how many, and the depths.

(Objected to, as immaterial.)

Ans. I do, sir; there are two. The lower jog is seven and a half; the upper one is eight.

Int. 39. (De bene.) Have you or not, measured said jogs; if so, when?

(Objected to as last.)

Ans. I have, sir; Monday, I think—Monday of this week.

Int. 40. Where is the "Bowdoin" now?

Ans. She lies at the upper berth, Damon's wharf.

Int. 41. (De bene.) Which side of said wharf?

Ans. Northwestern side.

Int 42. (De bene.) Is this or not the side where the two jogs are which you have mentioned?

Ans. It is, sir.

Int. 43. (De bene. How does she lie in respect to either of these jogs?

(Objected to as immaterial.)

Ans. I should judge our stern lay forty-five feet below the jog in the wharf. I have the measure with me; I can tell you exactly.

Int. 44. (De bene.) Please refresh your recollection by any memorandum you may have, and state the distance.

Ans. (The witness produced a cord which he stated was the measure of the distance, and measured it off in the presence of the counsel and the magistrate, and stated the length to be sixteen yards and eleven inches.)

Int. 45. (De bene.) By whose directions, if any one's, did you take the berth the "Bowdoin" now occupies?

Ans. Mr. Dowling's, the foreman on Damon's wharf; he helped place her there.

Int. 46. (De bene.) Is or not your vessel loaded; and if so, what with?

348 Ans. She is loaded with molasses; the deck load is off.

Int. 47. (De bene.) Was or not the deck load off when she hauled in to the berth you have mentioned?

Ans. It was, sir.

Int. 48. (De bene.) Has she or not a full cargo under deck?

Ans. No, sir, she has not; she is about twenty hogsheads out of the hold.

Int. 49. (De bene.) Were these twenty taken out before the vessel hauled into that berth?

Ans. Yes, sir; they were.

Int. 50. (De bene.) How many hogsheads were there in the hold when the vessel hauled in?

Ans. I have not counted the hogsheads I have taken out; there were two hundred and thirty-four in when I hauled in. That's an estimate, but I can tell you exactly when I go aboard; I can count the hogsheads I have there, and give you the exact number there was.

Int. 51. When did you haul into that berth?

Ans. This morning, sir.

Int. 52. Are you or not going to ground in that position?

(Objected to.)

Ans. I am, sir.

Int. 53. By which of the jogs does her stern lie the distance you have mentioned; the one nearest the sea, or the one nearest the head of the dock?

Ans. The one nearest the head of the dock.

Cross-interrogatories, by John C. Dodge, esq, in behalf of respondents, and answers of the witness thereto.

Cross-int. 1. Are you now master of the "Bowdoin?"

Ans. I am, sir.

Cross-int. 2. When did you take command of her?

Ans. I should have to refer to my papers; I don't recollect the date.

Cross-int. 3. Where did you bring this cargo of molasses from?

Ans. Portland, sir.

Cross-int. 4. How many hogsheads in all did you bring?

349 Ans. Three hundred and eighty.

Cross-int. 5. Where did you unload the deck load, and so much from the hold as was taken out, before the vessel took her present position?

Ans. At the end of Damon's wharf, sir.

Cross-int. 6. At what time this morning did you haul to the place you now are in?

Ans. About half-past seven, sir.

Cross-int. 7. At what time did you leave the vessel to come here?

Ans. About eight o'clock, as near as I can tell.

Cross-int. 8. Did you leave the men discharging cargo?

Ans. I did not.

Cross-int. 9. Why had they not commenced discharging?

Ans. Mr. Dowling hadn't got ready. That is all the reason I know.

Cross-int. 10. When did you arrive in Boston, and when did you commence discharging cargo?

Ans. I arrived in Boston Sunday afternoon, sir—last Sunday. I commenced discharging cargo yesterday afternoon, sir.

Cross-int. 11. At what time of day did you commence?

Ans. I can't tell you the hour, sir. I was here when they commenced discharging.

Cross-int. 12. How many hogsheads were taken off the vessel before you moved to the place where you now are?

Ans. I estimate them at one hundred and forty-six, sir.

Cross-int. 13. You say Mr. Oakman told you he should not care if your vessel had broken in two in the middle. When and where was this?

Ans. On the morning of the accident; on the cap of the wharf, right alongside the vessel.

Cross-int. 14. Did he say why he would not care?

Ans. He did not,

Cross-int. 15. Did he give any reason?

Ans. He did not, sir, to my knowledge.

Cross-int. 16. Was any one but you and he present at the time?

Ans. Not to my knowledge.

Cross-int. 17. Were not many persons about, looking at the vessel and talking about her, while you and he were talking?

Ans. I think there was no one there at that present time, except the men who were rigging to take coal out of her, and discharging.

350 Cross-int. 18. How far did you stand from them?

Ans. I should say twenty feet.

Cross-int. 19. At what time of day was it?

Ans. I don't know the hour, but it was early in the morning.

Cross-int. 20. Did not Mr. Oakman ask you why you did not haul to the place where you were directed to haul?

(Objected to as immaterial.)

Ans. Not to my knowledge, sir.

Cross-int. 21. Will you swear that he did not?

(Objected to as last.)

Ans. No, sir; I will not.

Cross-int. 22. Did he not ask you why you did not haul further ahead?

Ans. I don't think that he did.

Cross-int. 23. Have you not sworn that he did in your former deposition?

Ans. I think not.

Cross-int. 24. How soon after this conversation did you go after the surveyors?

Ans. It might have been half an hour; I couldn't state exactly.

Cross-int. 25. How long do you think the conversation lasted?

Ans. Perhaps it lasted three minutes, and perhaps five. I couldn't tell exactly how long it did last.

Cross int. 26. Where did you go after the surveyors?

(Objected to as not relating to matter inquired of in the direct examination.)

Ans. I can't tell you the number of the street; it was on Commercial street. I called on Mr. Paine for one. I can't tell you the names of the other gentlemen, though I knew at the time.

Cross-int. 27. Did you not go first to Hannum, the broker?

(Objected to as last.)

Ans. I did, sir.

Cross-int. 28. Did he take you, or send you to Paine?

(Objected to as last.)

Ans. I couldn't say now whether he went himself, or sent a man. I think, though, he didn't go to Paine's with me.

351 Cross-int. 29. Did the surveyors go back with you to the wharf?

(Objected to as last.)

Ans. I think not, but I wouldn't swear.

Cross-int. 30. Do you know which got back there first, you or they?

(Objected to as last.)

Ans. I do not, sir.

Cross-int. 31. At what time of day did you get back?

(Objected to as last.)

Ans. I can't tell you the hour, because I didn't note it?

Cross-int. 32. State as nearly as you can.

(Objected to as last.)

Ans. Well, I should judge it was near to nine o'clock, sir; it might have been a little later.

Cross-int. 33. And you cannot say whether the surveyors went with you, or arrived before or after you?

(Objected to as last.)

Ans. I think there was one went with me; I think there was only one went with me, and the rest came after.

Cross-int. 34. Which one was that?

(Objected to as last.)

Ans. Being unacquainted with all the gentlemen, I should be unable to say now who it was.

Cross-int. 35. Then you have not a very accurate memory of what took place that morning, have you?

Ans. Yes, sir; I think my memory is quite good.

Cross-int. 36. And cannot tell whether or not it was Paine, the man you went to see, that went back with you?

Ans. No, sir; I don't know as I could swear to it; I don't know as I

should know either of the gentlemen if I was to meet them in the street now; they were strangers to me.

Cross-int. 37. Did you get more than one port warden?

(Objected to as cross-interrogation twenty-sixth.)

Ans. I think not, sir.

Cross-int. 38. It was to the port warden's office, on Commercial street you went, was it not?

(Objected to as last.)

Ans. I think it was, sir.

352 Cross-int. 39. Paine was the port warden you got, was he not?

(Objected to as last.)

Ans. I should have to refer to my books to tell; it's been so long, I've forgotten; I think he was, though.

Cross-int. 40. Was it the man from the port warden's office that went back with you?

(Objected to as last.)

Ans. I think it was.

Cross-int. 41. Do you know whether it was or not?

(Objected to as last.)

Ans. I couldn't swear to it, sir; I was very busy that morning; I had a good deal to remember.

Cross-int. 42. Who was the other, and where did you go for him?

(Objected to as last.)

Ans. I can't tell you the gentleman's name, at all, or where I went for him.

Cross int. 43. Had you more than two?

(Objected to as last.)

Ans. I think there was three of them, sir, if I recollect right.

Cross-int. 44. Where did you go for the third?

(Objected to as last.)

Ans. I think that Mr. Swett got the third man, but I am not positive.

Cross-int. 45. How many fore-and-aft fenders did you put in when you hauled in on Sunday?

Ans. Two, sir.

Cross-int. 46. Did they belong to the vessel?

Ans. Yes, sir, they did; I had one that I got out of the dock, a large sized fender, and the other was a piece of a spar that I'd always had.

Cross-int. 47. What do you mean by their belonging to the vessel, if you got one out of the dock?

Ans. I mean that I picked it up out of the dock, and after I picked it up it belonged to me, I presume.

Cross-int. 48. Out of Mr. Oakman's dock?

Ans. When I lay at the end of the wharf there.

Cross-int. 49. When did you pick this up; on what day?

353 Ans. It was either Friday or Saturday.

Cross-int. 50. Did you then take it on board your vessel?

Ans. I did, sir.

Cross-int. 51. Where was it floating when you took it up?

Ans. On the outside of my vessel.

Cross-int. 52. And outside of the dock?

Ans. Yes, sir.

Cross-int. 53. Did it appear to belong to any one?

Ans. No, sir.

Cross-int. 54. Did it appear to be kept there by any one to be used as a fender?

(Objected to as indefinite and immaterial.)

Ans. I thought that was what it had been used for. (To question repeated.) It did not.

Cross-int. 55. How far from the wharf, and how far outside the dock, was it floating?

(Objected to as immaterial.)

Ans. Perhaps forty-five or fifty feet from the end of the dock.

Cross-int. 56. Did you carry this away as your property?

Ans. Yes, sir.

Cross-int. 57. How long was it?

Ans. Fifteen feet.

Cross-int. 58. How long was the other fender you say you had on board?

Ans. It might have been twelve, thirteen, or fourteen feet, along there; I don't know as I could tell you the exact dimensions.

Cross-int. 59. Did you make this one you picked up into a fender when you picked it up?

Ans. I did not, sir; it answered my purpose for a fender when I picked it up without altering it.

Cross-int. 60. Did you attach ropes to it so as to be able to use it for a fender?

Ans. I did, sir.

Cross-int. 61. Did you do this the day you picked it up?

Ans. No, sir.

Cross-int. 62. When did you?

Ans. The afternoon that I hauled into the dock.

354 Cross-int. 63. You attached no rope to it until then?

Ans. No, sir.

Cross-int. 64. Where was this stick on Saturday after you picked it up?

Ans. It was on deck, sir.

Cross-int. 65. How did you get it on to the deck without attaching a rope to it?

Ans. Well, I put a rope 'round it, and made a strap and hoisted it on deck.

Cross-int. 66. How thick was this stick?

Ans. I don't know as I ever measured the exact thickness of the stick, but I should judge twelve or fourteen inches thick.

Cross-int. 67. What became of that stick?

Ans. It's a question that I can't answer.

Cross-int. 68. Had you in any up-and-down fenders on Sunday after you hauled in there?

Ans. I had some on the outside, sir; I don't recollect particularly about the inside; I might have had on the inside.

Cross-int. 69. You cannot remember whether you had any on the inside or not?

Ans. Up-and-down fenders? No, sir.

Cross-int. 70. Had you any other fenders in between the vessel and the wharf, except the two fore-and-aft ones you have above spoken of?

Ans. I think not, sir.

Cross-int. 71. What was your other fore-and-aft fender besides the one you picked up made of?

Ans. It was a piece of a spar, I think.

Cross-int. 72. How large was it; how thick?

Ans. I can't give the exact dimensions of it; eight or ten inches, perhaps a little larger.

Cross-int. 73. Did you not swear in your former deposition that you

had as a fender that Sunday a spar that was lying in the dock for fenders, or words to that effect?

(Objected to as tending to mislead the witness.)

Ans. I can't say now, sir, whether I did or not; but if I did, I thought that the one I picked up was calculated for a fender; I thought that some vessel might have lost it, or thrown it overboard. I might have sworn to that effect; I can't say.

355 Cross-int. 74. Did you not swear to these words—"I had a spar that was lying in the dock, I suppose for fenders?"

Ans. I don't recollect, sir.

Cross-int. 75. Do you mean to swear that any coal was taken on to the wharf from the main hatch, before the vessel was hauled ahead?

Ans. No, sir; I can't swear that any was taken on to the wharf, but I can swear that they was at work in the hatchway shovelling, and I judged by the time they were at work they got out twenty to thirty tons before she was hauled ahead; I was paying so much attention to other things that morning, that I can't tell just how much they did get out.

Cross-int. 76. Did you measure how far the jog was above the stern-post after the vessel hauled ahead?

Ans. I think it was measured there, sir; I think I did.

Cross-int. 77. How much was it?

Ans. I don't know as I can state exactly how much it was; it might have been eight or ten feet.

Cross-int. 78. If you measured then, you do not remember the result?

Ans. Not positively.

Cross-int. 79. When you say the jib-boom and bowsprit of the "Bowdoin" are forty feet long, from what point do you measure?

Ans. From the bow, sir; from the night-heads, I think, sir; I am not positive, though; I took the length of the bowsprit from a draft.

Cross-int. 80. Do you know how far your vessel was hauled ahead when she was moved?

Ans. I think it was nineteen feet, sir.

Cross-int. 81. How much of the length (forty feet for bowsprit and jib-boom) you have given, is bowsprit, and how much jib-boom?

Ans. Sixteen feet bowsprit, and twenty-four feet jib-boom.

Cross-int. 82. How do you know this?

Ans. That is the impression I got by the draft.

Cross-int. 83. Then you say your bowsprit from the night-heads is only sixteen feet long?

Ans. I think that is the dimensions.

Cross-int. 84. From what point do you reckon, when you say it is forty-five feet from the bow to the fore part of the main hatch, and seventy-two four to the fore part of the after hatch?

Ans. The after part of the after hatch—(I was reading from
356 the wrong line.) From the bows to the forward part of the after hatch, seventy-two feet. (To question repeated.) From the night-heads, sir; I understand the question, now.

Cross-int. 85. From the wrong line of what were you reading?

Ans. Well, of a sort of a memorandum that I made out of the dimensions of the vessel.

Cross-int. 86. What did you take these dimensions from?

Ans. I measured them, sir, myself.

Cross-int. 87. When did you measure them?

Ans. Last Monday, sir.

Cross-int. 88. What did you get the width from?

Ans. I measured with a string, sir, and then measured the string.

Cross-int. 89. Did you go away while your vessel was waiting at Mr. Oakman's wharf, before you hauled in?

(Objected to as not relating to matter inquired of in the direct examination.)

Ans. I did, sir.

Cross-int. 90. Where did you go?

(Objected to as last.)

Ans. To Portland.

Cross-int. 91. Did you make or note any protest in this case?

(Objected to as last.)

Ans. I did, sir.

Cross-int. 92. Where is it?

(Objected to as last.)

Ans. You'll have to ask Captain Sawyer about that, I guess; I believe he paid the bill.

Cross-int. 93. Before what notary did you go to make it?

(Objected to as last.)

Ans. I forget his name; he was a stranger to me; I would refer you to Mr. Hanney, who carried me in there.

Cross-int. 94. Was this done that morning when you came over to get the surveyors?

(Objected to as last.)

Ans. It was, sir.

357 Additional interrogatories by Mr. Lathrop, for the libellants, and answers of the witness thereto.

Int. 54. (De bene.) Before the vessel was hauled ahead, was the coal you speak of as wheeled from the hatch, taken from the main or after hatch?

Answer. It was taken from the main hatch, sir.

Int. 55. (De bene.) What was done with this coal before the vessel was hauled ahead?

Ans. It is my impression that it was put on the wharf; they were at work at the hatchway when I left the vessel in the morning; I thought they were putting the coal on the wharf.

Int. 56. (De bene.) How was it put on the wharf; by being hoisted up or how?

(Objected to, as assuming what has not been testified to.)

Ans. Yes, sir; by being hoisted up.

Int. 57. (De bene.) Was or not any coal taken from the after hatch before the vessel was hauled ahead?

Ans. I don't think there was, sir.

Int. 58. Are the jib-boom and bowsprit the same length now that they were when the "Bowdoin" met with the accident now in controversy?

Ans. The bowsprit is, sir, but the jib-boom is about two feet longer now than then; I think the jib-boom is a little longer—about two feet.

Int. 59. Do you know whether it is longer or shorter now, than when the accident happened?

Ans. I know it is a little longer, but I am unable to tell exactly how much.

Int. 60. When was this change made?

Ans. Last fall, sir, in the jib-boom; the jib-boom was put in last fall, and the bowsprit this spring, but the new bowsprit is the same length

as the other. The measurement of the jib-boom and bowsprit I have given you is what it was at the time of the accident.

Int. 61. You speak of taking the measurement of the jib-boom and bowsprit from the draft. Were or not any of the other measurements given by you taken from this draft?

Ans. No, sir; they were not.

358 Int. 62. (De bene.) You say you went away while at Oakman and Eldridge's wharf. On what day did you return?

Ans. As near as I can recollect, it was Thursday; I am not positive now; I should have to refer back to my books.

Additional cross-interrogatories by Mr. Dodge, for respondents, and answers of the witness thereto.

Cross-int. 95. On what day did you go to Portland?

Ans. Well, I think it was on Tuesday, but I can't swear to it; I have not charged my memory with the date, and should want a chance to think of it.

Cross-int. 96. State how long you were absent from Charlestown at this time.

Ans. I think I went in the Tuesday morning train, and returned in the Thursday morning train. I got back here at noon, the same time I got into Portland on Tuesday.

W. H. RANDALL.

Deposition of BAILEY LORING, a witness for the libellants, taken before Charles F. Walcott, notary public, July 21, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. State your name, age, residence, and occupation, and how long you have been engaged in the same.

Ans. Bailey Loring; fifty-three years of age; Boston; wharfinger; for six years.

Int. 2. Of what wharf are you a wharfinger?

Ans. Long wharf; I have been there for six years.

Int. 3. State how the bottom of Long wharf is dredged, whether on a gradual slope or not.

(Objected to as incompetent and immaterial.)

Ans. Well, it is a gradual slope from the entrance to the dock (from the ocean) to the head, to the upper end of the dock, from the
359 harbor that should be, not from the ocean, as it is entered from the harbor.

Int. 4. (De bene.) Is there or not a jog in said wharf?

Ans. There is.

Int. 5. (De bene.) How deep is this jog?

Ans. About ten feet.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Cross int. 1. Is the jog in or out; that is, is the wharf above the jog made wider or narrower by the jog?

(Objected to as immaterial.)

Ans. The jog is in, going from the entrance to the dock up; the wharf above the jog is narrower.

Cross-int. 2. Do vessels lie afloat to unload in the berth next above the jog, and also in the berth next below it?

Ans. No, sir; they ground at low water in both berths.

Cross-int. 3. How much water at low water is there at the jog?

Ans. Sixteen feet now; we are digging it out; we generally have eighteen feet.

Cross-int. 4. Then vessels always lie in these berths, mostly water-borne?

Ans. Mostly water-borne, yes, sir. The first answer would imply that; with sixteen feet of water they must be mostly water-borne.

Cross-int. 5. Long wharf is a public wharf, is it not?

Ans. I don't know as I understand the use of the word public in the question; I don't know as it is any more public than any wharf. It is for public use, free for anybody that will pay for accommodation. I mean to say, free for anybody that the proprietors or agent think proper to admit.

Cross-int. 6. What I mean is this; is or not this wharf for public use, as distinguished from a wharf used, for example, by a dealer in wood or coal, for the purposes of his own business?

(Objected to as incompetent and immaterial.)

Ans. I think it is.

BAILEY LORING.

360 Deposition of JACOB G. PIERCE, a witness for libellants, taken before Charles F. Walcott, notary public, July 21, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1. State your name, and whether you have before testified in this case.

Ans. Jacob G. Pierce; I have before testified in this case.

Int. 2. (De bene.) Assuming that the depths of water in the keel track of the "Bowdoin," where she lay on Monday morning, October 29th, 1866, were eight feet at the stern-post, five feet 'midships, and four feet forward, would this or not, in your judgment, be so uneven a surface as to injure the vessel when taking ground.

(Objected to, because the witness has not been shown to be an expert, and because evidence called for should have been taken by the libellants in the deposition taken by them before the respondents' case was put in.)

Ans. Not if the bottom was soft; if she had a good soft mud to lie on, it would not.

Int. 3. Do you know the condition of the mud in that dock, whether it is hard or soft?

Ans. All that I saw of it was soft.

Int. 4. Was there or not anything in the position of the vessel, as seen by you on Monday morning, October 29th, 1866, to indicate that the vessel had not been properly laid at the wharf, when she hauled in on Sunday?

Ans. I didn't discover that there was.

Int. 5. To what, if anything, do you attribute the position the vessel was in on Monday morning, October 29th, 1866?

(Objected to.)

Ans. I attribute it to the pile of coal under the vessel's bilge; perhaps, I should add in explanation of my answer to the other question, that the presence of the coal in the dock rendered the position of the

vessel an improper one. I meant to say, if there had been no obstruction, the position was a good one, so far as I observed.

Int. 6. Suppose the "Bowdoin," on Sunday, had hauled in along-
361 side the wharf with her side parallel with the wharf, and in grounding had struck on the coal, would this or not, in your judgment, have had the effect of heeling her off in the position you found her in on Monday morning?

(Objected to for form.)

Ans. It would.

Int. 7. Was or not the jib-boom and bowsprit, or either of them, over the side of the wharf on the said Monday morning?

(Objected to for form.)

Ans. It was not.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Cross-int. 1. What time of day was it when you went to this vessel on Monday, the 29th of October?

Ans. I think it was about eleven o'clock; I am not quite sure about the hour now, I think it was about eleven.

Cross-int. 2. At what time of tide was it, if you noticed?

(Objected to as relating to matter not inquired of in the direct examination.)

Ans. Pretty near low water; two-thirds ebb, or three-quarters ebb, I think we noticed at the time; ebb or flood, I won't be sure which.

Cross-int. 3. Can you not tell whether it was ebb or flood tide?

(Objected to as last.)

Ans. I think it was ebb tide; I didn't stay there long enough to tell whether the tide was ebbing or flowing—I think it was ebb tide; or rather, I didn't observe whether it was ebbing or flowing; I stayed there long enough, if I had observed it.

Cross-int. 4. How long did you stay there at that time?

Ans. I should think half or three-quarters of an hour.

Cross-int. 5. Did Captain Randall, the master of the vessel, go over with you?

Ans. No, sir; he did not.

Cross-int. 6. Who went with you?

Ans. I went alone; met Captain Paine there, I think.

362 Cross-int. 7. Did you see Randall there?

Ans. I did.

Cross-int. 8. Was he there when you arrived?

Ans. I think he was.

Cross-int. 9. Did you see him in Boston before you went over?

Ans. No, sir; I don't remember that I did; I don't think I did.

Cross-int. 10. How came you to go over?

(Objected to as relating to matter not inquired of in direct examination.)

Ans. I went over at the request of Captain Hannum.

Cross-int. 11. Did you go down into the dock the first day you went there?

(Objected to as last.)

Ans. I think I stated that I went down the second day and not the first; it's two or three years now; I made a statement in the survey we took at the time.

Cross-int. 12. Can you now remember whether you did or did not go down into the dock the first day?

(Objected to as last.)

Ans. I think I did not.

Cross-int. 13. Did you, the first day you were there, see the coal in the dock? Please try to recall whether you did or not.

(Objected to as last.)

Ans. I think we felt of it with a pole; I don't remember whether it was a little above or a little under the water; I know we felt of it, and that it was there.

Cross-int. 14. You cannot then testify that you saw it?

(Objected to as last.)

Ans. No, sir; I couldn't say that I saw it above water, 'though I might have seen it.

Cross-int. 15. What did you feel with?

(Objected to as last.)

Ans. A pole or an oar, whatever we had; in fact we had a pole and an oar both for sounding, I believe.

Cross-int. 16. Did you yourself use the oar or pole?

(Objected to as last.)

Ans. I couldn't say whether I did, or whether it was those that were with me.

363 Cross-int. 17. Did you stand on the vessel's deck when this feeling with the oar or pole was done?

(Objected to as last.)

Ans. Stood on the vessel's rail.

Cross-int. 18. To what on the wharf was the vessel made fast, if you noticed?

(Objected to as last.)

Ans. I didn't notice.

Cross-int. 19. Did you notice how she was made fast?

(Objected to as last.)

Ans. If I noticed it at the time, I don't remember now how she was made fast.

Cross-int. 20. Was she lying parallel to the wharf?

(Objected to as last.)

Ans. Well, she was lying nearly; her stern might have been off a little, I don't think a great deal, but her stern might have been off a little.

Cross-int. 21. How far was her rail from the wharf that morning?

(Objected to as last.)

Ans. The rail at the bows was near enough to step onto; the after part of the rail I don't know exactly how many feet it was; I didn't measure it; you couldn't step onto the after part of the rail, because it was below the wharf, and too faroff to step o: —rather too far off to step on.

Cross-int. 22. (De bene.) Do you mean to be understood by your answer to the second interrogatory, that a loaded vessel like the "Bowdoin" can lie in a place where she leaves a track, in which the depth of the water differs only one foot between her bow and 'midships, and three feet between the 'midships and stern, and not receive injury from it?

Ans. If it was soft mud the vessel would settle into it. (To question repeated.) I shouldn't think she would, if the bottom was soft, soft mud; I should think she would settle into it that much; there being more water, eight feet, at the stern would help buoy up the stern.

Cross-int. 23. (De bene.) Do you mean to say that her keel may be bent out of line two feet, and the vessel not receive injury?

Ans. No, sir, I don't mean to say any such thing; I mean to

364 say if the mud was soft, the vessel would settle into it without making a bend in her keel.

Cross-int. 24. (De bene.) If the keel of a loaded vessel is bent out of line only a few inches it will strain and injure the vessel, will it not?

Ans. It will to a certain extent.

Cross-int. 25 The keels of vessels are built straight, are they not?

Ans. Not always; sometimes they are built a trifle lower in the middle than they are at the ends, but generally they are built straight.

Cross-int. 26. You never knew one built higher in the middle than at the ends, did you?

(Objected to as not relating to matter inquired of in the direct examination.)

Ans. No, sir.

Cross-int. 27. Please state your age, and weight?

(Objected to as irrelevant.)

Ans. I am fifty-nine, last May; one hundred and eighty-five.

JACOB G. PIERCE.

Deposition of DAVID ELLIOTT, a witness for libellants, taken before Charles F. Walcott, notary public, July 21, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. State your name, and whether you have before testified in this case.

Ans. My name is David Elliot; I have before testified in the case.

Int. 2. Have you or not sailed to and from Boston; and if so, for how many years?

Ans. I have, for thirty-five years.

Int. 3. (De bene.) Do you or not know of any custom or usage to the effect that a jog in a wharf four or five feet deep indicates that the bottom of the dock is such opposite the jog, that a loaded vessel
365 cannot ground in safety if she lies with her stern twenty-five feet below the jog?

(Objected to as incompetent.)

Ans. I do not.

Int. 4. (De bene.) If the condition of the bottom of the dock is such that it is necessary for a vessel when taking ground to do so at a certain distance from the wharf, whose duty is it, if any one's, to see that she is so placed?

(Objected to, the witness not having been shown to be an expert.)

Ans. The duty of the wharfinger.

Int. 5. Is it or not customary for the master of a coasting vessel to sound the water in a dock where he is going to ground?

(Objected to.)

Ans. It is not customary.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Cross-int. 1. Are you now master of a vessel, and if so, of what vessel?

Ans. No, sir; I am not.

Cross-int. 2. When did you cease to be?

Ans. Seven years since.

Cross-int. 3. In what vessel did you last sail?

Ans. Ship "Undaunted."

Cross-int. 4. What voyages did you make in her, and how long were you in her?

Ans. I was in her but one voyage, from here to Ship Island and back.

Cross-int. 5. In what class of vessels have you usually sailed as master?

Ans. I've been in from fifty tons up to seventeen hundred; schooners, barks, and ships.

Cross-int. 6. Have you been much in the coal trade, coasting?

Ans. I've been in the coasting, from here to New Orleans, about six years, but not much in the coal trade. I have brought cargoes of coal here, but not in the coasting trade.

366 Cross-int. 7. Have you ever carried coal coastwise?

Ans. I have carried a load from here to New York; that's all I have carried coastwise.

Cross-int. 8. In what trade have you mostly been?

Ans. Mostly in the general freighting business. One-fourth of the time I have been long voyages, in the East India and California trade; and the rest of the time between different ports in the United States and Europe, and in the coasting trade between New Orleans and Boston.

Cross-int. 9. How much in the coasting trade between New Orleans and Boston?

Ans. Well, I should think about six years.

Cross-int. 10. What cargoes did you bring to Boston from New Orleans, and where did you unload them?

Ans. I most of the time brought cotton and beef and pork and flour; sometimes I brought tobacco; most of the time at Foster's wharves and Long wharf.

Cross-int. 11. You were familiar with those wharves and the docks, were you not?

Ans. Yes, sir.

Cross-int. 12. And your vessels were afloat while you were at them, were they not; or, at least in part water-borne?

Ans. Sometimes they were, and sometimes they were not; we never would ground them so that the water would go from them, if they were loaded with heavy cargoes.

Cross-int. 13. Do you know, of your own knowledge, what the masters of vessels loaded with coal or other heavy cargoes, in going into dock where the water is to leave them, do before going in, as to examining the bottom or sounding it?

(Objected to as immaterial.)

Ans. I can't tell you, but I can tell you what I do myself, if you want to know; I do not know what they do.

Cross-int. 14. Are you much acquainted with the wharves and docks in Boston?

Ans. I am.

Cross-int. 15. Do you know of a wharf in Boston at which there are two berths—one upper berth, where vessels lie aground, and a

367 lower berth, where they lie afloat—with a jog from three to eight feet deep between them, where the descent from the upper to the lower berth is not more abrupt or steep than the general slope of the bottom of the berths?

(Objected to, as tending to mislead, and intended to mislead.)

Ans. I don't know of any such wharf.

Additional interrogatories by Mr. Lathrop, for the libellants, and answers of the witness thereto.

Int. 6. (De bene.) Do you or not know a wharf in Boston where there are two berths—an upper and a lower one, the upper one for vessels to lie aground in at low water, and the lower one for vessels to lie afloat in—where the descent is more abrupt from one berth to the other than the gradual slope of the bottom of the dock from the head to the foot?

Ans. I do; I do know such a wharf.

Int. 7. What wharf is that?

Ans. Constitution wharf is; I could name others, if you wish.

Int. 8. Constitution wharf is how?

Ans. Vessels up at the head of the dock will lie aground at low water, and half or two-thirds the way down vessels drawing, I should think eighteen to twenty feet, will lie afloat at low water.

Int. 9. (De bene.) Is the bottom of Constitution wharf on a gradual slope, or is there a descent more or less abrupt from one berth to the other?

Ans. I don't know, sir.

Int. 10. (De bene.) Do you or not know a wharf in Boston where there are two berths—an upper and a lower one, the upper one for vessels to lie aground in at low water, and the lower one for vessels to lie afloat in—where the descent is more abrupt from one berth to the other than the gradual slope of the bottom of the dock from the head to the foot?

Ans. Well, I don't have any positive knowledge of one.

DAVID ELLIOTT.

368 Deposition of JOHN A. PAINE, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, July 22, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. State your name, and whether you have before testified in this case.

Ans. John A. Paine; I have.

Int. 2. What time of day was it when you first saw the schooner "Bowdoin" on Monday, October 29th, 1866.

(Objected to, the witness having been before examined to the whole subject.)

Ans. Between eleven and twelve.

Int. 3 At this time, how did the vessel lie, with respect to the wharf?

Ans. She lay straight with the wharf, or nearly; her stern may have been crowded a little off.

Int. 4. How much in your judgment was her stern, just above the jog, off more than her bow?

Ans. I should say about one foot.

Int. 5. How far was her bow from the wharf?

Ans. About two feet, abreast the fore rigging—cathead.

Int. 6. How far aft of her cathead was her fore rigging.

Ans. I don't exactly recollect; to the best of my judgment about fifteen feet. I didn't measure it.

Int. 7. Please explain then what you mean when you say her bow was off two feet abreast of the fore rigging—cathead.

Ans. Well, I mean that her bow from her fore rigging to the cathead was off about two feet from the wharf; that is, her rail, I mean.

Int. 8. Whether or not was there anything in the position of the ves-

sel on Monday morning to indicate that she had not been properly laid at the wharf when she hauled in on Sunday?

(Objected to as incompetent.)

Ans. In my judgment there was not, as she lay as fair in her berth as she could lie.

369 Int. 9. To what, if anything, do you attribute the position the vessel was in when you saw her on Monday morning?

(Objected to as relating to matter on which the wituess has been fully examined before.)

Ans. I attribute it to that pile of coal that was in the dock; to my judgment, there was nothing else caused the injury but the pile of coal; if the pile of coal hadn't been in the dock, the vessel wouldn't have been injured, in my judgment.

Int. 10. Suppose the "Bowdoin" on Sunday had hauled in alongside the wharf, with her side parallel with the wharf, and properly made fast, and in grounding had struck on the coal, would this or not have had the effect of heeling her off in the position you found her on Monday?

(Objected to as last and for form.)

Ans. In my judgment it would; she being a very flat vessel, and resting on this uneven surface, caused her to twist, and her bow held fast in the keel track.

Int. 11. Please state whether or not the keel, at the bow, was in the regular keel-track, or whether it was between the keel track and the wharf.

Ans. I should think it was in the regular keel track—in the regular bed where vessels had lain.

Int. 12. Was or not the main rigging, right abaft amidships, right across the bank of mud which was thrown up in the dock between the upper berth at the east wharf and the upper berth at the west wharf?

Ans. It was not; that is, as I understand the question to ask whether the main rigging lay athwart the bank between the east and west wharf?

Int. 13. If the vessel had been in this position across the bank, how would her jib-boom have been with respect to the side of the wharf?

Ans. Her jib-boom would have laid angling over the wharf. They couldn't get her in that position.

Int. 14. State why they couldn't get her in that position?

Ans. Because the bank of mud on the outer side was so high, that she couldn't swing in that position, deep loaded as she was; she couldn't be placed in that position.

Int. 15. Was or not the jib-boom over the wall at the side of the wharf?

370 Ans. It was not over the wall at the side of the wharf; I went half the wharf over to range her mast-heads, to see how much they were out of line.

Int. 16. On what part of the wharf did you stand to take the range of the masts?

Ans. The head of the wharf, at the head of the vessel.

Int. 17. State what you mean by the head of the wharf.

Ans. I mean the cap-sill that goes across at the head of the dock.

Int. 18. (De bene.) State whether or not the vessel had fenders between her and the wharf on Monday; and if so, what kind were they, up-and-down or fore-and-aft?

Ans. She had two, I think; fore-and-aft fenders—small ones, say about eight inches through, about six feet long each.

Int. 19. Have you or not sailed to and from Boston; and if so, for how many years?

Ans. Thirty-six years; most of the time I have been from Boston; in Boston vessels, and sailed from Boston about all the time.

Int. 20. During the time you have been port warden have you or not had occasion to visit the wharves in Boston and vicinity; and if so, how frequently?

Ans. I have visited the wharves every day, some of them; about every day; I won't say every day, because Sundays intervene, and I take a vacation every summer.

Int. 21. (De bene.) Do you or not know of any custom or usage that a jog in a wharf four or five feet deep indicates that the condition of the bottom of the dock is such that a loaded vessel cannot take ground in safety if she does so with her stern extending twenty-five feet below the jog?

(Objected to as irrelevant and immaterial.)

Ans. I do not.

Int. 22. Is it or not customary for a vessel to take up her martingale without positive orders to do so from the wharfinger?

(Objected to for form.)

Ans. It is not.

Int. 23. Is it or not customary for masters when they haul into a berth where they are going to ground to sound the water?

(Objected to for form.)

371 Ans. It is not an usual thing.

Int. 24. (De bene.) At the time you were on the pile of coal on Tuesday, the 30th of October, was or not, Mr. Orcutt, Mr. Oakman's clerk, present?

Ans. I think he was not.

Int. 25. (De bene.) Did you or not hear any conversation between Captain Randall and Mr. Orcutt about the coal injuring the vessel on said Tuesday?

Ans. I did not.

Int. 26. Did you or not see the coal in the dock on Monday, the 29th of October, 1866?

Ans. I did, some of it.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Cross-int. 1. How do you fix the time that you went over to the dock on Monday as between eleven and twelve o'clock?

Ans. I fix the time by my watch.

Cross-int. 2. What time was it by your watch when you got there?

Ans. I can't state the exact time; it was somewheres between eleven and twelve; if my memory serves me, it was about half past eleven when I got there. Captain Pierce came for me; it was after ten o'clock; I was busy, and I told him I would be over there soon after eleven.

Cross-int. 3. At what time did you leave Boston to go over?

Ans. I left about eleven; I don't know the exact minute.

Cross-int. 4. How did you fix the time you left Boston?

Ans. Nothing more than memory; as near as I can recollect, it was about eleven when I left to go over there; it's been so long that I can't recollect to within a few minutes.

Cross-int. 5. How do you fix the time you were there by your watch?

Ans. I think I looked at my watch; I was in conversation with Mr. Oakman, and asked him what time he could go to work to take out coal; his remark was that he would go to work as soon as they got back from dinner, which would be at one o'clock; and then I think that

we had been there something over half an hour; his laborers were just going to dinner, that is how I fixed the time.

372 Cross-int. 6. If you looked at your watch, what time was it when you looked at it?

Ans. I cannot say; it is so long ago, that it has passed from my mind.

Cross-int. 7. How do you fix the time by your watch, if you do not know what time it was by the watch?

(Objected to, the question having been already answered.)

Ans. I know. I told Captain Pierce I would get there soon after eleven o'clock; and I got there as soon after eleven o'clock as I could walk over there; I can't fix the time any other way.

Cross-int. 8. Then you do not fix it by your watch, do you?

Ans. If I tell a man I will be at a certain place at such a time, I look at my watch, and get there as near to that time as I can.

Cross-int. 9. When did you look at your watch then, and what time was it?

(Objected to as cross-int. 7.)

Ans. I looked at my watch at Constitution wharf; I think it was about eleven o'clock; I am not positive; it's been so long that I cannot remember.

Cross-int. 10. If you do not then remember what time it was, why do you say you fix the time by your watch?

(Objected to as last.)

Ans. When I tell a man I will be at a place at such a time, I endeavor to get to the place as near that time as I can; to remember within a quarter of an hour for two years, I can't do it.

Cross-int. 11. Did you look at your watch before you went over, or after you got there?

Ans. I looked at my watch before I went over, and I looked at it after I got there, and I looked at it when Mr. Oakman and I were talking about the time.

Cross-int. 12. Do you swear all you said in answer to the last question from your memory now?

Ans. As near as my memory will serve me.

Cross-int. 13. Upon the oath you have taken, do you remember that you looked at your watch at each of the times you stated in your answer to the eleventh cross-interrogatory?

373 Ans. I remember looking at my watch, but I can't state the exact minute it was. I remember looking at it before I went over, and I remember looking at it there.

Cross-int. 14. Do you or do you not now remember looking at it, at each of the times stated in your answer to the eleventh cross-interrogatory?

(Objected to as the question has been already answered several times.)

Ans. I remember perfectly well looking at my watch before I went over, to know how the time was, and while I was over there I looked at it once or twice—twice.

Cross-int. 15. Do you remember what time it was at either of the times by the watch?

(Objected to, the question having been answered.)

Ans. I think I answered—the first time it was about eleven o'clock, and when I was talking with Mr. Oakman it was about a quarter to twelve; that is as near as my memory will serve.

Cross-int. 16. Do you mean to be understood as swearing that you now remember what time it was by the watch at either of these times?

(Objected to, as cross-int. 14.)

Ans. I think I can swear that it wanted a quarter to twelve when I was talking to Mr. Oakman, and he said the men would go to work when they came back from dinner; and we were just leaving there. The other times, I cannot place the exact time.

Cross-int. 17. Was it before or after eleven o'clock, when you looked on Constitution wharf?

Ans. It was before eleven o'clock.

Cross-int. 18. You say you told Pierce that you would be there as soon after eleven o'clock as you could get there; what detained you until eleven o'clock—why did you not go at once?

Ans. I was taking out damaged cargo, out of a Liverpool ship.

Cross-int. 19. Did that detain you until eleven o'clock?

Ans. That detained me until near eleven.

Cross-int. 20. What else did you do before you started to go to Charlestown?

Ans. I was at several vessels at Constitution wharf; I think I was attending to three, discharging cargoes, and I visited them all before I went over.

374 Cross-int. 21. Was it before or after eleven o'clock, when you started to go over?

Ans. I think it was a few minutes before.

Cross-int. 22. How long does it take you to walk from Constitution wharf to Oakman & Eldridge's wharf?

Ans. I should think about twelve minutes, if I walk quick.

Cross-int. 23. What time of tide was it when you got there?

Ans. About a quarter flood—between a quarter and a third.

Cross-int. 24. How did you fix that?

Ans. I fixed the time at high water—it was high tide at 3.30 that day; and about eleven o'clock it would be about a quarter flood, according to the almanac; I am not exactly positive.

Cross-int. 25. Did you that day look at the almanac to see at what time it was high water?

Ans. I think I did; I haven't got the minutes of it.

Cross-int. 26. Do you know whether you did or not?

Ans. I know I did, and put it on my minutes.

Cross-int. 27. What almanac did you look at? Where did you get it?

Ans. Farmer's Almanac; in our office.

Cross-int. 28. Have you a good memory?

Ans. Not very; fair, my memory is; I can't remember names.

Cross-int. 29. Did you measure the distance of the rail of the "Bowdoin" from the wharf between the cathead and the fore rigging?

Ans. I did not.

Cross-int. 30. What makes you think it was two feet off?

Ans. Well, mere judgment. As I stepped from the wharf on to the rail, I judged it was about two feet; I suppose I could step about two feet and a half, and it was a good comfortable step.

Cross-int. 31. Did you not testify in the district court that you did not see any coal in the dock the first day—that it was then covered by the water?

Ans. It was covered by the water, but I saw the coal under the water. (To question repeated.) I did not so testify; I testified in the district court that the coal was covered with water about one foot.

Cross-int. 32. Did you feel after this coal the first day with Captain Pierce?

375 Ans. I think we put the pole over onto the coal the first day; after sounding at the stern and the off-shore side and bow, I put the pole on the pile of coal that was covered with water one foot, next the wharf, between the vessel and wharf.

Cross-int. 33. Was Pierce with you at the time you did this?

Ans. Yes, sir; he was.

Cross-int. 34. Which felt, you or he?

Ans. I used the pole; Captain Pierce measured it.

Cross-int. 35. You stood together then, did you?

Ans. Near by each other.

Cross-int. 36. Do you mean to say that you testified in the district court that you saw the coal in the dock the first day you were there?

Ans. Saw it through the water. My memory is, that I testified there was a foot of water over the coal on the in-shore side.

Cross-int. 37. The question is whether you testified that you saw it on the first day?

Ans. My memory is not good enough to say whether I did or not.

Cross-int. 38. Did any one but Pierce ask you to go over to Charlestown?

Ans. No; Captain Pierce came for me to go over and see that vessel.

Cross-int. 39. Did not Captain Randall, of the "Bowdoin," come after you?

Ans. I don't think I saw Captain Randall until I got to the schooner.

Cross-int. 40. Do you know whether he did or not?

Ans. I don't know; I think not.

Cross-int. 41. Did you tell any one on Monday that the coal had injured the vessel?

(Objected to, as immaterial.)

Ans. I did.

Cross-int. 42. Whom did you tell?

Ans. I told Captain Pierce, who was with me, and I told Mr. Oakman.

Cross-int. 43. Can you now remember whether you did or not see Randall before you got over to Charlestown?

Ans. I don't think I did see him. (To question repeated.) I cannot remember; the thing has passed from my mind.

376 Cross-int. 44. Was this the only damaged vessel you ever surveyed in that dock?

Ans. It was.

Cross-int. 45. What business were you in when you were master of a vessel?

Ans. At the first of my being master, I was in the Liverpool trade; at the last, I was in the Pacific trade; and in the time between, I was in the coasting trade between Boston, Charleston, Savannah, and New Orleans.

Cross-int. 46. At what wharves in Boston did you lay your packet when you came to Boston, when running a packet between southern ports and Boston?

Ans. Mostly at Commercial wharf; sometimes at Battery, sometimes at Central, sometimes at Constitution.

Cross-int. 47. These are all public wharves, are they not, as distinguished from private wharves, such as are kept, for example, by coal and wood dealers in conducting their private business?

(Objected to as immaterial.)

Ans. They are.

Cross-int. 48. Were you ever master of a vessel that brought coal coastwise to Boston?

(Objected to as last.)

Ans. No, I never was.

Cross-int. 49. Do you know what the custom is about sounding for deeply-loaded vessels going into coal wharves where they are to be left by the water at low water?

Ans. I do not.

Cross-int. 50. Do you know what the custom is about taking up martingales in such cases?

Ans. I do know. They don't take them up unless they are ordered.

Cross int. 51. How do you know?

Ans. From observation and my own experience.

Cross-int. 52. What vessels have you ever seen with their martingales down when their safety required them to be taken up?

(Objected to as incompetent and immaterial.)

Ans. I never saw any.

377 Cross-int. 53. What observation then enabled you to swear to the custom in cross-interrogatory fifty-one?

Ans. I see it every day, being about the wharves.

Cross-int. 54. What do you see every day?

Ans. I see vessels' jib-booms martingales down, and I see them up when I am about the wharves.

Cross-int. 55. Do you see them up often?

Ans. Not often.

Cross-int. 56. They are usually up, are they not, when it is necessary for them to be up for safety?

(Objected to as immaterial.)

Ans. They are.

Cross-int. 57. Do you always know when you see a martingale up, whether it is so by request of the wharfinger or by the choice of the officers of the vessel?

(Objected to, as immaterial.)

Ans. I do not know.

Cross-int. 58. Was it not raining very hard when you went down onto the coal, the second day you went to the vessel?

Ans. It was.

Cross-int. 59. Did it rain all the time you were there?

Ans. It didn't rain hard all the time; it rained in showers.

Cross-int. 60. Did it rain all the time you were there?

Ans. It rained all the time that we were there.

Cross-int. 61. How long were you there?

Ans. Ten minutes on the pile of coal.

Cross-int. 62. How long were you about the wharf that day?

Ans. Three-quarters of an hour about the vessel's cabin. Three-quarters of an hour about the wharf; it rained, and I went in below, waiting for Captain Pierce.

Cross-int. 63. Do you mean that it was three-fourths of an hour from the time you came to that dock until you left?

Ans. About that.

Cross-int. 64. How much of the time did you spend in the vessel's cabin?

Ans. Nearly all of it.

378 Cross-int. 65. Do you know of a wharf in Boston at which there are two berths—one upper berth, where vessels lie aground, and a lower berth where they lie afloat, with a jog from three to eight feet deep

between them—where the descent from the upper to the lower berth is not more steep or abrupt than the general slope of the bottom of the berths?

(Objected to, as incompetent and immaterial, and as tending and intended to mislead.)

Ans. I do not.

Additional interrogatories by Mr. Lathrop for the libellants, and answers of the witness thereto.

Int. 27. What do you mean by the last answer that you do not know?

Ans. I don't place a wharf in my mind, that is of that description, in Boston.

Int. 28. That is of what description?

Ans. The description that is read to me there, of the jog, and the bottom of the dock.

Int. 29. Please state what you understood the description to be, which you say does not describe a dock in Boston that you know of.

Ans. A dock where there is a six to eight feet jog in the wharf, and where the bottom goes off gradually, deepens off gradually; that's the way I understood it.

Int. 30. (De bene.) Do you or not know of a wharf in Boston or vicinity, except Oakman & Eldridge's, where the bottom opposite the jog is more abrupt than the general slope of the bottom of the dock?

Ans. Damon's wharf in Charlestown; there is a jog there, and an upper and lower berth; the vessel that lies at the upper berth has a sufficent place to lie level on.

Int. 31. (De bene.) Do you know any other dock, except Damon's and Oakman & Eldridge's, that has an abrupt descent at the jog?

Ans. I think battery wharf has.

Int. 32. Do you know of your own knowledge, whether it has or not?

Ans. I do not.

379 Int. 33. (De bene.) Do you know of your own knowledge any other dock than Damon's and Oakman & Eldridge's, that has this abrupt descent at the jog?

Ans. I don't think of any.

Int. 34. Are you or not sure that Captain Pierce did not take the pole on Monday and feel the coal between the vessel and the wharf?

(Objected to as leading.)

Ans. I don't know; I felt of the coal; whether he did or not, I don't know.

JOHN A. PAINE.

Deposition of ALEXANDER B. SWETT, a witness for libellants, taken before Charles F. Walcott, notary public, September 22, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Int. 1 State your name, and whether you have before testified in this case.

Ans. Alexander B. Swett; I have.

Int. 2. State whether or not, there was anything in the position of the schooner "Bowdoin" at Oakman & Eldridge's wharf on the Monday morning after the accident in October 1866, to indicate that the vessel had not been properly laid at the wharf when she was hauled in on Sunday.

(Objected to as irrelevant, and as inquiring of a matter in which the witness has not been shown to be an expert.)

Ans. I did not see anything.

Int. 3. What, in your judgment, if anything, was the cause of the position the vessel was in on Monday morning?

(Objected to, the witness having already been examined on this matter, and because he has not been shown to be an expert.)

Ans. The pile of coal that laid under the bilge.

380 Int. 4. How was the stern-post of the "Bowdoin" in respect to the jog in the wharf, after she was hauled ahead?

Ans. I think it was about seven feet abaft of the jog in the wharf.

Int. 5. Suppose the "Bowdoin" on Sunday had hauled in alongside the wharf, with her side parallel to it, and properly made fast, and in grounding had struck on the coal, would this or not, in your judgment, have had the effect of heeling her off in the position you found her in on Monday morning?

(Objected to for form, because the witness has not been shown to be competent.)

Ans. It would.

Int. 6. State whether or not the main rigging of the "Bowdoin" right abaft the 'midships was right across the bank between the two wharves, lying across this mud bank thrown up between the two berths?

(Objected to for form, and because the witness has no means of knowing the answer to the question.)

Ans. It was not, at any time I was there.

Int. 7. From what time to what time were you there on that Monday?

Ans. I was there at nine o'clock in the morning, and remained there, I think, till nigh eleven o'clock.

Int. 8 If the vessel had been in the position described in the last question but one, where would her jib-boom and bowsprit have been?

(Objected to, as not a question proper to be put to an expert.)

Ans. It would have fetched her bowsprit and jib-boom angling over the wharf.

Int. 9. Angling over what part of the wharf?

(Objected to as last.)

Ans. Over the wharf that she lay to.

Int. 10. Do you mean over the head, or the side of the wharf.

(Objected to as last.)

Ans. The side of the wharf.

Int. 11. State whether or not the jib-boom and bowsprit lay over the wall at the side of the wharf, that Monday morning.

Ans. No, sir; they did not.

Int. 12. How did they lie?

381 Ans. On Monday morning when I first went there, I rather think her jib-boom did lay over the wall, but I am not positive.

Int 13. Over which wall?

Ans. The wall at the head of the dock.

Int. 14. What do you mean when you say you are not positive whether they lay over the wall at the head of the dock? About what is your doubt?

Ans. I think she lay too far down the wharf; I don't think she came far enough up the dock to lay over the wall at the head of the dock.

Int. 15. Did you or not, see any fenders on that Monday morning between the vessel and the wharf?

Ans. I did.

Int. 16. What kind were they, up-and-down or fore-and-aft?

Ans. Fore-and-aft.

Int. 17. While repairing the "Bowdoin," did you or not see anything to indicate that the damage had been done by the coal?

Ans. I did.

Int. 18. What was it?

Ans. It was pieces of coal jammed up into the planking, and into the seams of the vessel.

Int. 19. State whether or not, on the Monday morning when you first saw the vessel, her keel at the bow was in the keel track, or between the keel track and the wharf?

Ans. It was in the keel track.

Cross-interrogatories by John C. Dodge, esq., for respondents and appellants, and answers of the witness thereto.

Cross-int. 1. About what time of tide was it, when you first saw this vessel on Monday morning?

Ans. It was low water, as nigh as I could remember now.

Cross-int. 2. Was it dead low water?

Ans. I think it was.

Cross-int. 3. When did you look to see where the keel was?

Ans. The morning that I went aboard of her; Monday morning.

Cross-int. 4. When you first went there?

Ans. Yes, sir.

382 Cross-int. 5. You testified in this case in the district court, did you not?

Ans. I did.

Cross-int. 6. Did you not say there that you saw no mark or abrasion from the coal on the vessel?

Ans. Not that I know of.

Cross-int. 7. Will you swear that you did not say that in substance?

Ans. I will not.

Cross-int. 8. When did you first mention to any person what you have now said about seeing pieces of coal jammed up into the planking and seams?

Ans. I can't remember when the first time was.

Cross-int. 9. Did you testify to any such thing in the district court?

Ans. I don't remember whether I did or not.

Cross-int. 10. Did you ever mention it to any one before to-day?

Ans. Yes.

Cross-int. 11. When?

Ans. I don't remember the time.

Cross-int. 12. To whom did you mention it?

Ans. There were men in my office, I don't remember who they were, who talked it over.

Cross-int. 13. How long ago was it?

Ans. Well, I couldn't say how long it has been; it was since the vessel was repaired, talking about the coal that caused the damage.

Cross-int. 14. Who were the men?

Ans. They were workmen who worked on the vessel; I can't recall their names; I will get one of them; I think it was Mr. Blackstone, carpenter; I am not positive whether it was him or not, but I think it was; Mr. Kilborn, a partner of mine, I think, has heard me speak of the coal being jammed into the plank.

Cross-int. 15. What is the rest of Blackstone's name?

Ans. Well, I couldn't say what his other name is.

Cross-int. 16. Did Kilborn work on the vessel?

Ans. No, sir.

Cross-int. 17. How large were the largest of these pieces of coal that were jammed into the planking?

Ans. From as big as a pea to a small walnut.

383 Cross-int. 18. Did you pull them out?

Ans. Yes, sir; we cleaned them off from the plank and out of the seams of the vessel.

Cross-int. 19. By what means did you clean them off?

Ans. We took scrapers and scraped them off; and took a reefing iron to clean the oakum out; they came out when we took the oakum out of the seams.

Cross-int. 20. Do you mean to swear that they were jammed into the oak wood of the plank, or only stuck into the paint?

Ans. They were stuck into the wood—jammed into the wood.

Cross-int. 21. How deeply were they jammed into the wood?

Ans. Well, they were in probably an eighth of an inch.

Cross-int. 22. You testified before Mr. Nutter, the assessor, in this case, did you not?

Ans. Yes, sir; I did.

Cross int. 23. Do you know how many times you have testified in this case before, in all?

Ans. Three or four, I think.

Cross-int. 24. Have you ever before said anything about this coal being jammed into the wood or seams?

Ans. I don't remember whether I have or not in court.

Cross-int. 25. How long ago was the conversation at your counting-room, of which you have spoken?

Ans. I couldn't tell you.

Cross-int. 26. State as nearly as you can?

Ans. I couldn't say whether it was six months, or three.

Cross-int. 27. Was it within six months?

Ans. I couldn't say.

Cross-int. 28. Was it within nine months?

Ans. It might have been; I couldn't say whether it was or not.

Cross-int 29. Was it within twelve months?

Ans. I couldn't say; it might have been.

Cross-int. 30. Can you give no more definite statement as to the time than you have done?

Ans. I can't; It has been talked since November, 1866; it has been talked over since that time.

384 Cross-int. 31. I am asking about this conversation at your counting-room, at which you say you think Blackstone was present; and my question is, can you not state nearer when it was than to say it was since November, 1866?

Ans. No, I can't state it any stated time.

A. B. SWETT.

Deposition of BENJAMIN G. BARBOUR, a witness for the respondents, taken before Charles F. Walcott, notary public, August 6th, A. D. 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business; and if you are a master mariner, state how long you have been.

Ans. Benjamin G. Barbour; I reside in Deer Isle, Maine; I am a mariner—master mariner; I have been master since 1862, I think.

Int. 2. State whether or not you were at Charlestown, Massachusetts, in the latter part of October, 1866?

Ans. I was.

Int. 3. Of what vesssel, if any, were you then master?

Ans. I was not master of any at that time.

Int. 4. Of what vessel had you last been master, and when had you left her?

Ans. I can't recollect the time when I left her; I had been master of the brig "C. B. Allen." I think I left her about six weeks before I was at Charlestown, as above.

Int. 5. Did you at that time see at Charlestown the schooner "Mary D. Haskell?"

Ans. Yes, sir.

Int. 6. Did you know her master and mate; if so, what were their names?

385 Ans. Asa G. Haskell was the master; the mate's name was Alfred Torrey. I did know them.

Int. 7. In what dock at Charlestown did the "Mary D. Haskell" unload, if you know?

Ans. In Mr. Oakman's dock.

Int. 8. State whether or not you helped the schooner "Bowdoin" haul into that dock at that time?

Ans. Yes, sir; I did.

Int. 9. On what day of the week was it?

Ans. On Sunday, sir.

Int. 10. On board what vessel were you staying that day?

Ans. The "Mary D. Haskell."

Int. 11. Who, if any one, from the "Mary D. Haskell" helped the "Bowdoin" haul into the dock, besides yourself?

Ans. Captain Haskell and Alfred Torrey.

Int. 12. How long were you and they on board the "Bowdoin" in helping her haul in?

Ans. As near as I can judge, from a half to three-quarters of an hour.

Int. 13. Did the mate Torrey go back to the "Mary D. Haskell" when you and Captain Haskell did; if not, when and by what way did he return to the "Haskell?"

(Objected to.)

Ans. No, sir; he did not. I do not recollect for a certainty, but I think he jumped from the schooner's quarter to our bow, but I am not certain; he returned soon after.

Int. 14. State whether or not you saw the captain of the "Bowdoin" and Captain Haskell in conversation together while Captain Haskell was on board the "Bowdoin" at that time.

(Objected to.)

Ans. I remember their talking together, but do not recollect what was said.

Int. 15. Do you remember whether you then noticed what was said, or whether you only saw that they were talking together?

(Objected to.)

Ans. I only recollect that they were talking together.

386 Int. 16. Is it a common or uncommon thing for vessels to come up with their martingales while lying in dock to unload?

(Objected to.)

Ans. It is quite an usual thing, if a vessel's bows are lying across a wharf or bridge?

Int. 17. How many, and what stays are usually connected with the martingale?

Ans. From three to four: flying-jib; outer-jib; fore-top-gallant, and on some vessels fore-royal stays.

F. C. Loring, esq., in behalf of the libellants, was present, but did not cross-examine.

B. G. BARBOUR.

Deposition of GEORGE F. CLAPP, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 26, 1868.

Interrogatories of John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business.

Ans. My name is George F. Clapp; my residence is Malden, Massachusetts; I am a sail-maker, in the city of Boston; I went to sea for three years, but as sail-maker of the ship in which I went, so that my business has always been sail-making.

Int. 2. Have you at any time made any measurements of the schooner "Bowdoin;" if yes, at whose request, and when and where was she at the time?

Ans. I have; at the request of Mr. Samuel Oakman; I can't give the exact date, but it was this last summer at Damon's wharf, Charlestown; I didn't make any minute of the day.

Int. 3. Please state her entire length, from taffrail to end of jib-boom. Also, the distance from taffrail to centre of mainmast; from centre of mainmast to centre of foremast; from centre of foremast to knight-head; from knight-head to end of bowsprit; and from end of bowsprit to end of jib-boom.

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(Objected to as immaterial and as inadmissible at this stage of the case.)

Ans. From taffrail to the end of jib-boom is one hundred and fifty feet and six inches, according to my measure, if these figures are right; if I have added them up right; I am positive that I have. From centre of taffrail to centre of mainmast, forty-seven feet three inches; from centre of mainmast to centre of foremast, thirty-seven feet nine inches; from centre of foremast to knight-head is twenty-five feet six inches; from knight-head to end of bowsprit, thirteen feet six inches; from end of bowsprit to the end of the jib-boom, twenty-six feet six inches.

Int. 4. What is her breadth of beam at main hatch?

(Objected to as last.)

Ans. I made her breadth of beam at main hatch twenty-six feet three inches, by my measure.

Int. 5. In getting the measurements of length, did you measure on deck, or from the top of the taffrail to the knight-head at the top of the rail?

(Objected to as last.)

Ans. Measured at the top of the rail, and not on deck.

Int. 6. How would her taffrail, at the point you measured from, come as to the outer end of her rudder?

(Objected to as last, and because witness has not been shown to be qualified to judge.)

Ans. I should think about on a straight line; the taffrail might project over a trifle.

Int. 7. What did you find the distance in the "Bowdoin" to be, from the fore part of the main hatch to the knight-head?

(Objected to as interrogatory five.)

Ans. Forty-eight feet six inches.

Int. 8. Where was this measurement made, on deck, or on a level with the rail forward?

(Objected to as last.)

Ans. On a level with the rail.

Int. 9. Did you measure the length of the bulkhead on Mr.
388 Oakman's wharf, from the jog up the wharf; if yes, when did you do it, and how long is it?

(Objected to as last.)

Ans. I did, sir; I measured it this morning; from the jog to the upper part of the bulkhead or coal-run is fifty-seven feet nine inches.

Int. 10. State what other measurements you have made, if any, and give the results.

(Objected to as last.)

Ans. From the wall at the upper end of the dock to the run, sixty-six feet and nine inches; from the run to the side of the wharf, eight feet; the width of the run, eight feet nine by about six feet; the eight feet nine is at the bottom; I didn't measure the top, I called it about six feet; the height of the run, fifteen feet.

Cross-examination de bene.

Cross-interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) In giving your answers to the foregoing questions have you stated the figures from recollection, or by referring to memoranda?

Ans. By referring to memoranda.

Cross-int. 2. (De bene.) Did you measure from the taffrail to end of jib-boom?

Ans. I did, but not in one measure.

Cross-int. 3. (De bene.) You got at the result you gave us this morning by adding up various figures here this morning, did you not?

Ans. I did.

Cross-int. 4. (De bene.) When you measured the width at the main hatch, did you measure across from the top of one rail to the top of the other, or how?

Ans. I think I measured a little over the rail, to allow for the swell of the sides, but won't be positive.

Cross-int. 5. (De bene.) Who assisted you in making the measurements?

Ans. A man by the name of Bangs.

Cross-int. 6. (De bene.) Who is he, and where is he?

Ans. He is a sail-maker by trade, and now at work for me.

389 Cross-int. 7. (De bene.) With what did you make the measurements?

Ans. With a measuring tape, used for measuring sails.

Cross-int. 8. (De bene.) Did you have hold of one end of the tape, and he the other?

Ans. He held the end of the tape, and I took the measure.

Cross-int. 9. (De bene.) At the time you took the measurements, did you notice whether or not the rudder was out on a line with the keel?

Ans. I did not.

Cross-int. 10. (De bene.) Did you notice anything about the rudder?

Ans. I did not.

Cross-int. 11. (De bene.) Did you take any other measurements of the vessel than those you have given us; if so, state them?

Ans. I took no others.

Interrogatory by Mr. Dodge, for respondents, and answer of the witness thereto.

Int. 11. State whether or not the memoranda from which you have testified are in your handwriting.

(Objected to.)

Ans. They are.

GEO. F. CLAPP.

Deposition of AMMIEL COLMAN, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 26, A. D. 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. State your name, and whether or not you have already given a deposition in this case.

Ans. Ammiel Colman; I have.

Int. 2. State whether or not on the Monday that it was discovered the "Bowdoin" had suffered damage, any coal was landed from her before she was hauled ahead.

(Objected to as immaterial and inadmissible at this stage of the case.)

Ans. There was not.

390 Int. 3. From which of the hatches was the coal that was taken out onto the deck to relieve her before she was hauled ahead, taken?

(Objected to as last.)

Ans. From the after hatch.

Int. 4. Was or not any taken from the main hatch?

(Objected to as last.)

Ans. There was not.

Int. 5. State whether or not any alteration has been made in the bulkhead or coal run since the "Bowdoin" was injured.

(Objected to as last.)

Ans. It is the same now as then.

Int. 6. Do you know whether or not during the week the "Bowdoin" was waiting before she hauled in, her mate was at Mr. Oakman's office; state all you know about it?

(Objected to as last.)

Ans. Something was said in regard to a berth,—his first chance; I told him he was to take the place of the "Daybreak," instead of coming in where the "Haskell" laid; he thought that that was his chance; and said I, "You can find out more readily by going to the office;" he then left me, and went up to the office.

Int. 7. On what day of the week was this, and where were you?

(Objected to as last.)

Ans. I don't recollect the day of the week; I was on the end of the West wharf.

Int. 8. How came you and the mate together at that time?
(Objected to as last.)
Ans. We were about moving the "Haskell" to her berth, and he thought that it was his place.
Int. 9. Where on a vessel is the martingale placed?
(Objected to as last.)
Ans. Near the end of the bowsprit, down.
Int. 10. How many and what stays are ordinarily attached to it, and how are they attached to it?
(Objected to as last.)
Ans. More or less in number; attached through a hook in the martingale leading to the bow of the vessel.
391 Int. 11. Where a vessel has a jib, a flying-jib, and foretopmast, how many stays are ordinarily attached to it?
(Objected to as last.)
Ans. Four to five.
Int. 12. How long a time would it take, in your judgment, to come up with the "Bowdoin's" martingale, supposing she had three stays attached to it?
(Objected to, as last, and because the witness has not been shown to be qualified to judge.)
Ans. Fifteen minutes.
Int. 13. Did she or not in fact come up with it, when or after she hauled ahead?
(Objected to as interrogatory eleven.)
Ans. At the time she hauled ahead.
Int. 14. Please state whether or not vessels lying aground, loaded, at coal wharves, form a bed in the place where they lie.
(Objected to as last.)
Ans. They do.
Int. 15. Will or not other vessels coming into the same berth, and being made fast, with the ordinary fenders which vessels carry put in, drop into this bed?
(Objected to as last.)
Ans. They will.
Int. 16. Is it or not customary at Oakman & Eldridge's wharf, or other private coal wharves, to have a person present to show vessels hauling in on Sunday where to haul?
(Objected to for form and as last.)
Ans. It is not customary.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Cross-int. 1. (De bene.) Can you swear, as a matter of distinct recollection, that no coal was taken from the "Bowdoin" and put on the wharf, before she was hauled ahead?
Ans. I can.
Cross-int. 2. (De bene.) At what time was she hauled ahead?
Ans. About noon time; I couldn't say exactly what hour; on Monday.
392 Cross-int. 3. (De bene.) How much did you unload that day?
Ans. I could not tell the number of tons; we did not weigh it.
Cross-int. 4. (De bene.) Can you tell about the number?
Ans. Thirty or forty tons.
Cross-int. 5. (De bene.) Have not many of the boards been taken off the bulkhead since October, 1866?

Ans. More or less might have been taken off.

Cross-int. 6. (De bene.) What do you mean then by saying it is in the same condition now as then?

Ans. The frame is in the same condition; these boards are a matter of no account.

Cross-int. 7. (De bene.) What time of day was it when you had the conversation with the mate which you have testified about in your answer to the sixth direct interrogatory?

Ans. I can't state the hour.

Cross-int. 8. (De bene.) In the morning or afternoon?

Ans. I think in the forenoon.

Cross-int. 9. (De bene.) When did you first speak of this conversation to anybody?

Ans. That I cannot reccollect.

Cross-int. 10. (De bene.) Have you ever testified to it before in this case?

Ans. I don't remember.

Cross-int. 11. (De bene.) You testified in the district court in this case, did you not?

Ans. I did.

Cross-int. 12. (De bene.) Did you testify to this conversation there?

Ans. I don't remember that I did, or that I did not.

Cross-int. 13. (De bene.) Mention every time you remember speaking of this conversation to any one, before you testified here to day.

Ans. That I can't recollect, any time.

Cross-int. 14. (De bene.) Can you recollect any time you have spoken of it before to-day?

Ans. I don't know as I can, the day or hour; I didn't bear it in mind.

Cross-int. 15. (De bene.) Can you recollect the fact of having spoken about it to any one, before to-day?

393 Ans. I suppose I must have spoken about it before at some time.

Cross-int. 16. (De bene.) And is this all the recollection you have of it?

Ans. All the recollection, more than I know I had that conversation with him.

Cross-int. 17. (De bene.) Did you see the mate go into the office, after the conversation referred to was had?

Ans. I did not.

AMMIEL COLMAN.

Deposition of JOHN T. GARDNER, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 28, A. D. 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. Please state your name, residence, and business and how long you have been engaged in your present business.

Ans. My name is John T. Gardner; harbor master of the city of Boston; my residence is 103 Springfield street; I have been harbor master eight years.

Int. 2. What were you, before you were harbor master, and how long?

Ans. Pilot, eighteen years; and before that, seaman; altogether included, going to sea, pilot, and harbor master, between forty-one and forty-two years.

Int. 3. Where is a vessel's martingale?

(Objected to as immaterial and inadmissible at this stage of the case.)

Ans. Directly under the end of the bowsprit, pointing down towards the sea.

Int. 4. How long a time does it take to come up with the martingale of a schooner of two hundred and fifty tons, that has three stays attached to it?

(Objected to as immaterial and incompetent at this stage of the case.)

394 Ans. It would take ten minutes, on an average; five to fifteen minutes as a general thing.

Int. 5. Do you or not know the usages of vessels, in relation to coming up with the martingale, when they are at wharves?

(Objected to as incompetent at this stage of the case.)

Ans. I think I do, sir.

Int. 6. By these usages who is to see that they are taken up when circumstances require it?

(Objected to as incompetent and inadmissible at this stage of the case.)

Ans. The captain or the mate, generally has been the usage in my experience; sometimes the wharfinger, if he sees that it is required, if he is there.

Int. 7. When vessels lie aground at wharves, loaded, do they or not form a bed where they lie?

(Objected to as immaterial and incompetent at this stage of the case.)

Ans. They generally do, on a soft bottom—muddy bottom.

Int. 8. Do they or not always?

(Objected to for form, and as last.)

Ans. Not in very hard bottom.

Int. 9. After this bed is formed, will or not vessels coming into the berth, and putting in the fenders which vessels usually carry, drop into this bed?

(Objected to as interrogatory seven, and as not a question calling for the judgment of an expert.)

Ans. A vessel of the same length and lying at the same place naturally would.

Cross-interrogatories by John Lathrop, esq., in behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) Please state your age.

Ans. Fifty-three years next November.

Cross-int. 2. (De bene.) The martingale is at a right angle with the bowsprit, is it not?

Ans. Some people stay them different; not quite so. Naturally, as a general thing, they hang down straight under the bowsprit, they are nearly at right angles with the bowsprit; in some vessels, the bowsprit steeps about thirty degrees, and in some it is nearly level; as a

395 general thing, the martingale is at about right angles. I should divide it between at right angles with the level of the sea and the line of the bowsprit.

Cross-int. 3. (De bene.) Some vessels are more flat on the bottom than others, are they not?

Ans. They are.

Cross-int. 4. (De bene.) Whether a vessel would take the same bed as another would depend upon whether she was about the same width and flatness and about the same length, would it not?

Ans. I think it would.

JOHN T. GARDNER.

Deposition of JOSEPH K. LOW, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 28, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. Please state your name and age, what is your business, and how long you have been engaged in it.

Ans. My name is Joseph K. Low; forty years of age; my business is wharfinger, at the Boston Gas Light Company's works; I have been so engaged for nine years.

Int. 2. How much coal do you receive there per year?

Ans. Last year, we received sixty thousand tons; this year, the amount will probably be larger; it increases every year.

Int. 3. Do or not vessels haul to your wharf on Sundays?

Ans. They do.

Int. 4. Is it your custom to have a person present, when they haul in on Sunday, to place them?

(Objected to as immaterial and as incompetent at this stage of the case.)

Ans. No, sir.

Int. 5. Is it or not ever necessary for vessels coming to your wharf, to come up with their martingale?

(Objected to as last.)

Ans. Very often.

396 Int. 6. When a vessel hauls to a place where it is necessary for her safety or convenience that she should come up with the martingale, whose duty is it to see that it is done?

(Objected to as last, and because witness has not been shown to be qualified to testify.)

Ans. As a general thing, it is the crew's; it is the captain's duty to do it.

Cross-interrogatories by John Lathrop, esq., on behalf of libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) Where is the Gas Company's wharf, and what is the name of the wharf?

Ans. It is situated just below the old Charlestown bridge; there used to be three separate wharves, Doak's, Brown's, and City wharf, and Vinal's wharf now, which came into our possession on the 1st of September; they are on this side, in Boston.

Cross-int. 2. (De bene.) Do vessels lie aground at these wharves?

Ans. No, sir; unless it is a large ship, drawing twenty-one feet of water; she would probably touch bottom then.

Cross-int. 3. (De bene.) Do you have no one at your wharves on Sundays?

Ans. No, sir; we have a watchman, but he has nothing to do with vessels; he is on the gate.

Cross-int. 4. (De bene.) Your wharves are used exclusively for your own business, are they not?

Ans. Yes, sir.

Cross-int. 5. (De bene.) State when it is necessary for vessels at your wharves to take up their martingales.

Ans. At times, we have two large vessels at either of the wharves, and there is a berth between the two, and if she can get in there by taking in her jib-boom, or swinging the spanker-boom in-board, we do so.

Cross-int. 6. (De bene.) In such a case, you tell them to take up the martingale, or tell them to rig in their jib-boom, do you not?

Ans. Yes, sir.

397 *Direct examination resumed.*

Interrogatories by Mr. Dodge, for respondents, and answers of the witness thereto.

Int. 7. Are you acquainted with the usages in regard to coming up with the martingale at other wharves than yours?

(Objected to as interrogatory four.)

Ans. Yes, sir.

Int. 8. How much time does it take to come up with the martingale of a vessel of two hundred and fifty tons, with three stays attached to the martingale?

(Objected to as last, and because the witness has not been shown to be an expert.)

Ans. Well, that would depend a good deal on the crew; if they had a good smart crew, I should think they might rig it in, in half an hour. To take up the martingale, alone, would take fifteen minutes.

Int. 9. When a master is directed to come to a certain place, and in order to get there it is necessary to come up with the martingale, does or not the master usually come up with it without special orders to do so?

(Objected to as last.)

Ans. He does at our wharf. If I was there, I might say to him to do so; but if I told him to haul into a berth, I should expect that he would do so; what I mean by that is, that I should expect him to come up with his head-gear, if it was necessary to get into the berth; it is always the custom at our wharf.

Additional cross-interrogatories by Mr. Lathrop, and answers of the witness thereto.

Cross-int. 7. (De bene.) You mean, if he could not unload without taking it up, or endangering his head-gear, do you not?

Ans. I mean if there was room enough for him to get in there by taking it up, that I should expect him to go in there.

Cross-int. 8. (De bene.) Suppose there was room enough for him to get in, without taking it up; should you expect him to take it up, without special directions from you?

Ans. No, sir.

JOSEPH K. LOW.

398 Deposition of HOWARD SNELLING, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 28, 1868.

Interrogatories by John C. Dodge, esq., for respondents, and answers of the witness thereto.

Int. 1. Please state your residence and business.

Ans. My residence now is at Weston; my business is coal business.

Int. 2. Have you a coal wharf? If so, where, how many berths are there at it, and do vessels lie aground in either of them?

(Objected to as immaterial and incompetent at this stage of the case.)

Ans. I have two coal wharves; one next to the Gas Company in Commercial street, and one in Albany, at the foot of Canton street; there

are two berths at each wharf; vessels lie aground in them; there is only one berth in both wharves, where they do not lie aground, that is the lower one.

Int. 3. How much coal do you receive a year onto these wharves?

(Objected to as last.)

Ans. One of them we have only had this year; I can't tell; at the lower one we received last year over thirty thousand tons.

Int. 4. Do vessels haul into these berths where they lie aground, on Sunday?

(Objected to as last.)

Ans. Yes, sir.

Int. 5. Is it customary at your wharves to have a person present to place vessels hauling in on Sunday?

(Objected to as last.)

Ans. No, sir.

Int. 6. Do you know the usages in this respect at other private coal wharves?

(Objected to as last.)

Ans. No, sir; I can't say I know about other people.

399 Cross-interrogatories by John Lathrop, esq., for libellants, and answers of the witness thereto.

Cross-int. 1. (De bene.) Your wharves are used exclusively for your own business, are they not?

Ans. An occasional cargo we take on wharfage for other people—very seldom.

Cross-int. 2. (De bene.) As a general thing they are used exclusively for your own business, are they not?

Ans. Yes, sir.

Cross-int. 3. (De bene.) Is the bottom of the docks at your wharves in a safe condition, or is it in so dangerous a condition that vessels cannot ground in safety, unless they haul exactly to a particular place?

(Objected to as immaterial and as not admissible in this stage of the case.)

Ans. They could haul directly to both of them without any trouble, unless there were vessels lying at the end of the wharf, and there usually are vessels lying at the end of the wharves. (To question repeated.) The bottom is in a good condition.

Interrogatory by Mr. Dodge, for respondents, and answer of the witness thereto.

Int. 7. Describe how the berths at your wharves are situated.

(Objected to as to interrogatory six.)

Ans. One faces to the north and the other faces to the west at the lower wharf; at the upper wharf I should say one faced about southeast, and the other about west; at right angles to each other. At each wharf there is one berth at the side and one at the end.

HOWARD SNELLING.

Deposition of SAMUEL OAKMAN, a witnesss for respondents, taken before Cha's F. Walcott, notary public, at Boston, September 28, 1868.

Interrogatories by John C. Dodge, esq., for respondents, and answers of the witness thereto.

Int. 1. State your name, and whether or not you have already given a deposition in this case.

400 Ans. Samuel Oakman; I have.

Int. 2. State whether or not you ever told Captain Randall, of the "Bowdoin," that you would not have cared if his vessel had broken in two, or anything of that effect or meaning.

Ans. I have not.

Int. 3. State whether or not you ever told him that his vessel was not injured.

Ans. No, sir.

Int. 4. State whether or not, on the Monday the "Bowdoin" was found injured, any coal was landed from her before she was moved ahead.

Ans. There was not.

Int. 5. State whether any coal was taken out of the main hatch before she was moved ahead.

Ans. No, sir; there was not.

Int. 6. How soon after hauling ahead did the discharging commence?

Ans. Immediately.

Int. 7. Is your wharf a private or a public wharf?

(Objected to as immaterial and incompetent at this stage of the case.)

Ans. Private.

Int. 8. Suppose the "Bowdoin," when she hauled in on Sunday, had been hauled to the place where she unloaded, and the fenders that vessels carry had been put in, how would she have grounded?

(Objected to as last and because witness has not been shown to be qualified as an expert.)

Ans. Safely, and right in the bed.

Cross-interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto.

Cross-int. 1 (De bene.) What do you mean by your wharf being a private wharf?

Ans. It is almost exclusively for our own business; there is no business done there, unless by special arrangement; there is no vessel comes there, unless I know about it previously.

401 Cross-int. 2. (De bene.) Is it more devoted to your own business now than it was in 1866?

Ans. No, sir.

Cross-int. 3. (De bene.) In 1866, how many vessels unloaded at your wharves that had cargoes for other people?

Ans. I couldn't tell, without reference to the books.

Cross int. 4. (De bene.) Can you tell about how many?

Ans. No, sir.

Cross-int. 5. (De bene.) Were there not quite a large number?

Ans. We are discharging vessels continuously; it is almost impossible to give you the number, and many of them are consigned to us, to receive and deliver, by factories and parties having no wharves, which we do, by special arrangement; in most cases, we are in the bill of lading; it is consigned to us like our own coal.

Cross-int. 6. (De bene.) What proportion of the cargoes unloaded at your wharves are owned by you, and what proportion belongs to other people?

Ans. Without going into figures, I should say three-quarters were ours.

Cross-int. 7. (De bene.) How many vessels do you unload at your

wharves for other people, a year; I mean those belonging to other people, whether consigned to you or not?

Ans. I could only approximate—guess at it, here; I should say there would be as many as thirty.

Cross-int. 8. (De bene.) Are there not more than thirty?

Ans. I couldn't say.

Cross-int. 9. (De bene.) Should you have any doubt about their averaging one a week?

Ans. Yes, sir; I mean, taking the year through; coal vessels don't arrive very much after December, till next April or May.

Cross-int. 10. (De bene.) Then from April or May to December you unload at least thirty cargoes belonging to other persons?

Ans. I should say so.

Cross-int. 11. (De bene.) Do you not also unload other cargoes than coal at your wharves?

Ans. Sometimes.

Cross-int. 12. (De bene.) What kinds of cargoes are these?

402 Ans. We are exclusively, I might say, most exclusively, coal; we have some cargoes of iron; and I would say, that in our own business we handle lime, cement, brick, and sand, stone and building materials; that is our own business.

Cross-int. 13. (De bene.) Does the iron belong to you or to other persons?

Ans. Generally to other parties.

Cross-int. 14. (De bene.) Then your business consists partly in unloading cargoes for other people for compensation, and partly in unloading and selling your own coal and various materials, does it not?

Ans. Yes, sir; but it's all by a special arrangement; I receipt for these cargoes when I receive them, and weigh them, and become thereby somewhat interested in them, something like a warehouseman.

Cross-int. 15. (De bene.) The "Bowdoin" was hauled ahead on Monday at high water, was she not?

Ans. About high water; it was as soon as there was water enough to haul her ahead.

Cross-int. 16. (De bene.) You testified in this case in the district court, did you not.

Ans. I did.

Cross-int. 17. (De bene.) You there testified about the conversation you said you had with the mate on Friday, did you not?

(Objected to as opening a matter on which witness has not been examined.)

Ans. Probably; I don't recollect at this time.

Cross-int. 18. (De bene.) When you so testified, you intended to give a full account of the conversation, did you not?

(Objected to as last.)

Ans. Probably I did; I know of no reason why I shouldn't, as it occurred to me then.

Cross-int. 19. (De bene.) Did you testify anything in the district court about saying to the mate "You go down and see where she lays, as we are going to use the same stage, the same engine, and everything precisely as it is working there?"

(Objected to as last.)

Ans. I can't tell what I testified to in the district court.

Cross-int. 20. (De bene.) Did you testify in the district court,

403 that you told the mate to bring his main hatch so as to use that rigging precisely as it was being used on the "Daybreak."

(Objected to as last.)

Ans. My impression is that I did; but I can't recollect at this distance.

Cross-int. 21. (De bene.) Have you or not any distinct recollection whether you testified to either of the matters above inquired about in the district court?

(Objected to as last.)

Ans. I have not.

Interrogatory by Mr. Dodge, for respondents, and answer of the witness thereto.

Int. 9. Do you know at what time of day on Monday, the "Bowdoin" was hauled ahead?

Ans. Yes, sir; about two o'clock.

Cross-interrogatories by Mr. Lathrop, for libellants and appellees, and answers of the witness thereto.

Cross-int. 22. (De bene.) What time on Monday did you cease unloading the "Bowdoin."?

Ans. At the usual time Monday night; six o'clock, I suppose; that was the time.

Cross-int. 23. (De bene.) How many tons did you get out on Monday?

Ans. By estimation about fifty.

SAMUEL OAKMAN.

Deposition of GEORGE MANNING, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 28, A. D. 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. Please state your name, and whether you have already given a deposition in this case; and whether you are now in Mr. Oak*ham's* employ.

404 Ans. George Manning; I have; I am not in Mr. Oak*ham's* employ.

Int. 2. State whether on that Monday in which it was discovered that the "Bowdoin" has been injured, any coal was landed from her before she was hauled ahead.

(Objected to as immaterial and incompetent at this stage of case.)

Ans. No, sir.

Int. 3. State whether any coal was taken out of her main hatch before she was hauled ahead.

(Objected to as last.)

Ans. No, sir; none taken out of her main hatch.

Int. 4. Out of which hatch was that taken which was taken out and wheeled ahead to relieve her?

(Objected to as last.)

Ans. Out of the aft hatch.

Int. 5. State whether, during the week prior to the accident to the "Bowdoin," you at any time saw the mate of the "Bowdoin" in Mr. Oakman's office; if you did, at what time of day was it, and how came you to be there?

(Objected to as last.)

Ans. He was there once; he came in, in the morning, about quarter of seven; I opened the office, and staid there till the clerk came.

Cross-interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) What day was this that he came in?

Ans. I couldn't remember what day of the week it was.

Cross-int. 2. (De bene.) When was your attention called to the question whether the mate had been in the office?

Ans. To-day, here.

Cross-int. 3. (De bene.) When before?

Ans. There never was anything said to me about it before, that I know of.

Cross-int. 4. (De bene.) Do you mean that your attention was first called to the question whether the mate had been in the office that week, to-day, during your examination.

Ans. I don't recollect that my attention was called to it before. (To question repeated.) That's the first time that I reccollect of it.

405 Cross-int. 5. (De bene.) Did not Mr. Dodge ask you about it this afternoon, before your deposition was begun?

Ans. Here in the office he has; to-day, here.

Cross-int. 6. (De bene.) You mean then, that your attention has not been called to it before you came here to-day?

Ans. No, sir; my attention hasn't been called to it before.

Cross-int. 7 (De bene.) Has not Mr. Oakman spoken to you about it?

Ans. No, sir; not that I ever recollected of.

Cross-int. 8. (De bene.) What enables you to fix the fact that the mate was in the office that week before the accident?

Ans. He came in to know how soon he could have his vessel discharged.

(Answer objected to by counsel for libellants as irresponsive.)

Cross-int. 9 (De bene.) I didn't ask you what he came in for, but what enables you to recollect that he came into the office?

Ans. That's what made me recollect it, because he wanted to know how soon he could have his vessel discharged.

Cross-int. 10. (De bene.) He asked you this more than once outside the office, did he not?

Ans. Yes, sir.

Cross int. 11. (De bene.) When was your attention first called to the question whether the coal was taken out of the main or after hatch, before the vessel was hauled ahead?

Ans. I think it was last winter here, when I gave my deposition.

Cross-int. 12. (De bene.) Do you remember what you then testified about it?

Ans. No, sir; I don't know as I do now.

Cross-int. 13. (De bene.) Is there a hatch on the "Bowdoin," aft of the main hatch?

Ans. The aft hatch.

Cross-int. 14. (De bene.) How do you know that coal was not taken from the main hatch, before the vessel was hauled ahead?

Ans. Because I was aboard of her; I was on her deck there, till the men went off of her.

Cross-int. 15. (De bene.) Were you on board of her all the morning, while they were taking coal out before she was hauled ahead?

406 Ans. I was there while they were taking coal out, for I set them at it; out of the aft hatch, putting it up forward.

Cross-int. 16. (De bene.) Were you there all the time they were so at work?

Ans. I wan't out of sight of them, when they were at work on it that morning.

Cross-int. 17. (De bene.) Did you have no other work to attend to that morning?

Ans. That was my main work, mostly, 'round that vessel, till Mr. Oakman got along; till Mr. Oakman and Captain Colman got 'round.

GEORGE MANNING.

Deposition of WILLIAM FLETCHER, a witness for respondents, taken before Cha's F. Walcott, notary public, at Boston, Sept 29, 1868.

Interrogatories by John C. Dodge, esq., for respondents, and answers of the witness thereto.

Int. 1 Please state your name, residence, and business, and how long you have been engaged in your present business, and what was your business before you went into your present business.

Ans. William Fletcher; I am now residing at Swampscott; coal-dealer on Causeway street in Boston; I have been engaged in my present business for thirty-one years; I was a sailor before.

Int. 2. How many tons of coal do you receive into your wharf in a year, as nearly as you can state?

Ans. Forty thousand tons.

Int. 3. How many berths are there for unloading at your wharf, and do vessels lie aground in unloading there?

Ans. I have eight berths; vessels lie aground in all the side berths, dock berths, at the side of the wharf.

Int. 4. Do vessels ever come to your wharf and into their berths on Sunday?

(Objected to as immaterial and incompetent at this stage of the case.)

Ans. Yes, sir.

407 Int. 5. Is it customary at your wharf to have a man there on Sunday to place vessels that haul in on Sunday?

(Objected to as last.)

Ans. No, sir.

Int. 6. Do you or not know the custom at other private coal wharves in Boston in this respect.

(Objected to as last.)

Ans. I do not.

Int. 7. Will or will not a vessel, coming into her berth, and properly made fast, and putting in the ordinary fenders which vessels carry, drop into the bed where other vessels have lain before her?

(Objected to as last and as not a question calling for the judgment of an expert.)

Ans. She will.

Int. 8. Is it a common or uncommon thing for vessels to come up with their martingale when at a wharf?

(Objected to as interrogatory six.)

Ans. It is a common thing when they are liable to come in contact with anything; for instance, lying at the head of a dock, and liable to come in contact with the cap.

Int. 9. How long does this require with a vessel, say two hundred and fifty tons, with three stays attached to the martingale?

(Objected to as last and because witness has not been shown to be an expert.)

Ans. I should think that three men could do it in ten minutes; it is a very simple operation.

Int. 10. Who usually orders this done, and does it, when the safety or convenience of the vessel requires it?

(Objected to for form and as last.)

Ans. It is the duty of the captain or mate, whichever has charge.

Cross-interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) What is the name of your wharf?

Ans. It is known as Fletcher's wharf; it was originally and properly called Trull's wharf, but has became known as Fletcher's wharf.

408 Cross-int. 2. (De bene.) On what part of Causeway street is it?

Ans. About midway between the two Charlestown bridges; in fact, we are occupying two wharves, Trull's and Minot's.

Cross-int. 3. (De bene.) Are the bottoms of the docks at your wharves in a safe or unsafe condition for vessels to ground there?

(Objected to as immaterial and irrelevant.)

Ans. Safe; safe, excepting between berths.

Cross-int. 4. (De bene.) Is it necessary for a vessel's safety, in grounding at your wharves, that she should haul precisely to a particular spot?

Ans. Yes.

Cross-int. 5. (De bene.) When a vessel hauls in, you have some one there to see that she takes her proper berth, do you not?

Ans. We do through the week days; I generally look at that myself, if I am there.

Cross-int. 6. (De bene.) How often do vessels come in on Sunday to your wharves?

Ans. They are as liable to arrive on Sunday as on any other day, through the shipping season.

Cross-int. 7. (De bene.) If you know on Saturday that a vessel is coming in on Sunday, do you not have some one there to see that she takes her proper berth?

Ans. We sometimes do that, sir.

Cross-int. 8. (De bene.) Is it not usual for the wharfinger, or whoever has charge of a wharf, to tell the master to take up his martingale, if it is necessary for him to do so?

Ans. It is not usual.

Cross-int. 9. (De bene.) Do you not, at your wharves, if you want a vessel to lie so far ahead that her bowsprit will be over the cap of the wall, tell the master to take up his martingale?

Ans. I have done that, sir; advised him to take it up.

Additional interrogatory by Mr. Dodge, for the respondents, and answer of the witness thereto.

Int. 11. When you know a vessel is to haul to your wharf on Sunday, and you have pointed out on a week day to the master or mate

409 the berth into which she is to haul, do you send a man down on Sunday to see that she comes into it?

(Objected to as interrogatory six.)

Ans. We never, unless she is drawing a heavy draft of water, and we have to make unusual exertion to get her into one of our upper berths; then we have somebody there to look after it.

Cross-interrogatories by Mr. Lathrop, for libellants and appellees, and answers of the witness thereto.

Cross-int. 10. (De bene.) How many vessels have you had haul in to

your wharf on Sunday, which you knew the day before were coming in?

Ans. I could'nt state the number, sir.

Cross-int. 11. (De bene.) Could you give us any idea of the number?

Ans. I could'nt, except take the number of shipping days and the number of Sundays, and take the proportion.

Cross-int. 12. (De bene.) Don't vessels come in on Sunday that you don't know the day before are coming?

Ans. Often; we frequently find a vessel in a berth Monday morning that we did not know was coming. Captains that are in the habit of coming there run in on Sunday and take a berth, and run the risk of being in the right place.

Interrogatory by Mr. Dodge, for respondents, and answer of the witness thereto.

Int. 12. Do you or not often know Saturday that vessels are coming in on Sunday, and direct the captain or mate on Saturday what berth to take?

Ans. We often do that, sir.

W'M FLETCHER.

410 Deposition of THOMAS NELSON, a witness for respondents, taken before Charles F. Walcott, notary public, at Boston, September 30, 1868.

Interrogatories by John C. Dodge, esq., in behalf of respondents, and answers of the witness thereto.

Int. 1. State you name, residence, and business, how long you have been engaged in your present business, and what was your business before that.

Ans. Thomas Nelson; Neponset; my business is in Boston, South Boston; wharfinger; I have been so engaged for five years; my business before that was going to sea, for twenty-nine years, from boy to captain; at first in the whaling business, afterwards in the merchant business, to various parts of the world.

Int. 2. How many tons of coal a year do you receive upon your wharf, and how many berths for discharging vessels have you?

(Objected to as immaterial and as inadmissible at this stage of the case.)

Ans. We average about twenty-four thousand tons per year, and we have three berths for discharging.

Int. 3. Do vessels lie aground while discharging in these berths?

(Objected to as last.)

Ans. Yes, sir; at all of them.

Int. 4. State whether vessels come to your wharf on Sunday to discharge?

(Objected to as last.)

Ans. Yes, sir; frequently.

Int. 5. State whether or not it is customary on your wharf to have a person present to attend to placing them, when they come in on Sunday.

(Objected to as last.)

Ans. No, sir; I merely tell them where to haul, and give them no further attention.

Int. 6. Tell them when?

(Objected to as last.)

Ans. If I see the captain, and he wants to know where his berth is, I merely tell him where to haul.

411 Int. 7. Do you mean that you are yourself there on Sunday, to tell them; if not, when do you tell them?

(Objected to as last.)

Ans. I am never there myself on Sunday; I tell them when I see them, if I see them over night, Saturday night.

Int. 8. State whether when a vessel is hauled into her berth, and the fenders that vessels usually carry are put in, she will or will not drop safely into the bed made by vessels that have lain there before.

(Objected to as last and also not a proper question for an expert.)

Ans. She will, sir.

Int. 9. Is it a common or an uncommon thing for vessels lying at wharves to come up with their martingales?

(Objected to as interrogatory seven.)

Ans. It is a very common thing, particularly in New York.

Int. 10. How is it in Boston?

(Objected to as last.)

Ans. It is very common in Boston; one-third of the vessels that come to my wharf have to come up with their martingales.

Int. 11. How long does it take to do this in a vessel of say two hundred and fifty tons, with three stays attached to the martingale?

(Objected to as last.)

Ans. Not to exceed five minutes, sir.

Int. 12. In practice who sees that this is done, and orders it done?

(Objected to as last.)

Ans. The master or mate—whoever is in charge of the vessel.

Cross-interrogatories by John Lathrop, esq., for libellants and appellees, and answers of the witness thereto.

Cross-int. 1. (De bene.) What is your age, and how long were you master of a vessel?

Ans. My age is forty-nine; I was master thirteen years.

Cross-int. 2. (De bene.) Of what sort of a vessel were you master?

Ans. Ships, barks, and brigs.

Cross-int. 3. (De bene.) In what trade?

Ans. Whaling and merchant service.

Cross-int. 4. (De bene.) What branches of the merchant service?

Ans. Mostly foreign, very little coasting.

412 Cross-int. 5. (De bene.) What is the name of your wharf, and where is it situated?

Ans. Nelson's wharf, in South Boston, on Granite st; it is part of Boston wharf.

Cross-int. 6. (De bene.) Do you have a berth on each side of your wharf, and one at the end?

Ans. Yes, sir.

Cross-int. 7. (De bene.) Do you know anything about the jogs at Boston wharf as to their size?

(Objected to as irrelevant, and as opening matter of which witness has not been asked in direct examination.)

Ans. They average about sixty feet deep.

Cross-int. 8. (De bene.) On week days do you have some one to see that a vessel is properly placed in her berth when she hauls in?

Ans. No more than on Sunday; I merely tell them where to haul.

Cross-int. 9. (De bene.) Then there is no difference in your practice in this respect on Sundays and week days, is there?

Ans. None materially, sir, except that I am there on week days; of course; if I see anything going wrong I mention it to the commanding officer, master or mate; I mean by that, I merely advise them, having had a little experience myself, the best way of getting into the dock, that's all.

Cross-int. 10. (De bene.) Your wharf is a private wharf for the sale of coal, is it not?

Ans. Yes, sir.

Cross-int. 11. (De bene.) When vessels come to your wharf, and you want them to lie so far ahead that their bowsprit will be over the cap-sill of the wharf, do you not tell the captain to come up with his martingale?

Ans. Sometimes I do, sir; sometimes they do it of their own accord.

Cross-int. 12. (De bene.) Those who do it of their own accord are masters who have been in there before, are they not?

Ans. No, sir; [they are only masters who attend to their duty, and see that when they are in their berth everything is done which their duty requires; it is as much their duty, as to attend to their vessel at night at sea.]

(Answer in brackets objected to by counsel for libellants as irresponsive.)

413 Cross-int. 13. (De bene.) Did any one ask you to make a speech on what you consider to be a master's duty?

(Objected to as irrelevant.)

Ans. No, sir.

Cross-int. 14. (De bene.) Will you then confine yourself to answering the questions put you?

Ans. I will.

Cross-int. 15. (De bene.) If a vessel that had never been at your wharf before should come there, and you should tell her master to haul into one of the side berths, and he could lie at the side and discharge, without taking up his martingale, should you expect him to haul so far ahead that he had to take it up, unless you expressly told him to take it up?

(Objected to as immaterial and irrelevant.)

Ans. Most vessels would be obliged to haul their martingale up, as the tide fell, otherwise the martingale would strike the wharf.

Cross-int. 16. (De bene.) Then at your wharf a vessel couldn't lie at a side berth to discharge, without her martingale being over the cap-sill, if she didn't take it up, could she?

Ans. At one berth she would be obliged to come up with her martingale.

Cross-int. 17. (De bene.) How is it with the others?

Ans. It is not necessary to start the martingale.

Cross-int. 18. (De bene.) Do vessels ever take up their martingales, at the two other berths?

Ans. No, sir.

Cross-int. 19. (De bene.) Then, as I understand you, at one berth vessels have to come up with their martingales, in order to lie there to discharge, and at this berth they sometimes take it up of their own accord, and you sometimes tell them to take it up; is this so?

Ans. Yes, sir.

Interrogatories by Mr. Dodge for respondents, and answers of the witness thereto.

Int. 13. If you directed a master to come to a certain berth at your wharf, and, in order to get there or lie there safely, it is necessary

414 to come up with the martingale, should you or not expect him to stop short of his berth to avoid taking up the martingale?

(Objected to as immaterial and not admissible at this stage of the case.)

Ans. I should not, sir.

Int. 14. Do you or not receive cargoes of coal onto your wharf, not designed nor used for your trade; if yes, is this a frequent or infrequent occurrence?

(Objected to as last.)

Ans. Very frequent, sir.

THOMAS NELSON.

Deposition of JOHN LOWELL, a witness for libellants and appellees, taken before Charles F. Walcott, notary public, at Boston, October 6, 1868.

Interrogatories by John Lathrop, esq., in behalf of libellants, and answers of the witness thereto.

Int. 1. Please state your name, and whether or not the case of Sawyer vs. Oakman was tried before you in the United States district court for the district of Massachusetts.

Ans. John Lowell; yes.

Int. 2. Please state whether or not you took notes of the hearing in said case.

Ans. I did.

Int. 3. Please state what kind of notes you take in hearing before you, whether full or otherwise?

Ans. I intend to take very full notes.

Int. 4. Please state whether the notes taken by you in the case of Sawyer vs. Oakman were full or otherwise?

Ans. They appear to have been full.

Int. Please refresh your memory by examining the notes of the evidence of Nathan C. Mulliken, and state what said witness testified in the district court as to the distance the stern of the schooner "Bowdoin" lay by the jog of the wharf, after she was hauled ahead?

415 (Objected to as calling for testimony which is not admissible in evidence, and also because no proper foundation has been laid.)

Ans. I find the following notes of the evidence of that witness. "I made measurements to see how far she lay from head of dock; her cutwater was forty-three feet from head of dock; measured next day, and same point was twenty-three or twenty-four feet; the second day her stern was by the jog one bay, where second pile of wharf comes out, say eight or ten feet. I measured as near square to stem and stern-post in each case as possible."

Int 6. Please refresh your memory by examining the notes of the evidence of John Keating, and state what said witness testified in the district court about the conversation he had with the mate of the "Bowdoin" on Sunday, after the "Bowdoin" had hauled into the dock.

(Objected to as above.)

Ans. I find in my notes as before, the following as the evidence of the witness now named: "Didn't see the schooner hauling in; saw hauled in, between four and five o'clock; she was afloat; asked the mate if he was going to lay there, and he said Yes. I said, Bad place for you to lay, says I. I said, Are you going to discharge where you are. I guess so, says he. Says I, You'll find difficulty if your vessel grounds there." Then, in brackets is the following, against which I have marked "no foundation for this," meaning that a foundation for contradiction had not been made. ["Says he, I told the captain he hadn't got as far ahead as wharfinger

directed, and what suits him suits me;"] that's all in brackets. Then it goes on, this witness resuming, "I told him he would be fast aground forward and afloat aft; don't recollect that I said anything about injury to his vessel; not sure whether I did or not; don't recollect that he said anything about being able to take care of his own vessel." This is the end of the direct examination. On cross-examination—"Between four and five p. m., don't know when tide high that day; can't say whether her bow would be afloat if tide one-third down; if she drew twelve feet she wouldn't be able to go ahead; then her bow would be aground. I know it was before five o'clock. I left my house a few minutes before four and delayed a little on the way. I took no notice about the tide; the vessel looked as if a good deal of water 'round her." On re-examination—"Think I told the mate his vessel would be hurted if
416 it lay there." Recross—"I said I couldn't [illegible]os."—(which means positively) "swear."

Int. 7. Please examine your notes of evidence of A. F. Swann, and state what time witness testified in the district court that he went to the wharf on Monday morning, and whether he saw the vessel the first time he went or not.

(Objected to as above.)

Ans. I find these minutes: "29 Oct. I worked at O. & E., engineer; discharged by steam; I got to wharf about five, a. m. Second time I went down I noticed vessel in trouble and notified captain."

Int. 8. Please state whether said witness testified as to the distance the vessel was hauled ahead, and if so, what distance.

(Objected to as above.)

Ans. I find that he says she was hauled up twenty feet six inches.

Int. 9. Please state whether said witness testified on cross examination as to the time he called the captain and mate, and whether he testified anything, and what, about moving the stage.

(Objected to as above.)

Ans. On cross-examination I find these words: "About six and a half, I called the mate, and captain came; we didn't move the stage; we undertook to move it; don't know whether it was moved or not before Colman came"— I think the word is Colman.

Int. 10. Please examine the evidence of Alfred Torrey, the mate of the "M. B. Haskell," and state what said witness testified in the district court.

(Objected to as above.)

Ans. I find witness named in my minutes, Alfred Barry, describing himself as mate of the "M. B. Haskell." He says, "Go to sea, now "M. B. Haskell" as mate—; 28th Oct. Sunday, was so. On Saturday, 27th, my vessel was unloading at that wharf; know Captain Colman the foreman, and on Saturday heard Captain C. tell mate of B—n.—where he should place the vessel; they were then standing at place where he ordered him to haul his main hatch; not being very near I couldn't understand exactly; he said to come square to stage that was there and he put his hand on a post—two posts—I think the stage lay between the two. I helped haul her in on Sunday; he didn't put her in the
417 place, but probably twenty feet below; nothing in my hearing said to him as to whether he was going to leave her there. Saturday he told him. I asked the mate if he was going any further ahead; he said No, he should have to come up with his martingale if he did." Cross-examination: "I was standing on the wharf fifteen or twenty feet from them, doing nothing, looking at my vessel which was on opposite side of dock; I may have been on east pier five or ten minutes when they came; the post was perhaps ten feet from the bulkhead; think

he told him to bring the after part of his hatch; will swear the stage was between the two posts. This was after schooner had hauled out of same dock; stage lay angling."

At 10 o'clock a. m., the hearing was adjourned until Friday, the 9th inst., at 9 o'clock a. m., at the same place.

October 9th, 1868, 9 o'clock, a. m. The hearing was resumed pursuant to adjournment, the parties being respectively represented by the same counsel as at the previous hearing.

Cross-examination de bene.

Cross-interrogatories by John C. Dodge, esq., in behalf of respondents and appellants, and answers of the witness thereto.

Cross-int. 1. (De bene.) Please state whether you now remember what any of the witnesses above referred to said?

Ans. I have no very distinct recollection, except that one witness, who I think was the man I have called Barry, whose name is now said to be Torrey, said that he was at a considerable distance from the place where the conversation occurred to which he testified. I remember that one of the witnesses testifying to a conversation placed himself at a distance from the parties to it; that I remember distinctly apart from the notes.

418 Cross-int. 2. (De bene.) Please state if you remember the witness Keating on the stand?

Ans. I have no recollection of any of the witnesses whose testimony I have given, in such a way as to know them again.

Cross-int. 3. (De bene.) I mean do you remember his appearance on the stand?

Ans. No.

Cross-int. 4. (De bene.) In making up your own judgment in a case, do you not rely in part on your notes and in part on your memory?

(Objected to as immaterial.)

Ans. I do usually.

Cross-int. 5. (De bene.) When you speak of taking full notes, you do not mean that you write down all a witness says, do you?

Ans. I intend to, when I can; but I cannot say that I always succeed; I intend to write the exact language, when I possibly can do it.

Cross-int. 6. (De bene.) You do not ordinarily have witnesses stop or pause for you to write, do you?

Ans. Very seldom.

Cross-int. 7. (De bene.) You spoke of two words in Torrey's testimony being underscored, please state if there are no other words underscored in the notes of his testimony?

(Objected to as immaterial.)

Ans. There are two words besides the words mentioned in the cross-examination; there are two words in the direct—"understand exactly." That underscoring does not refer to the emphasis of the witness, as it did in case of the other words, but was for my own guidance; this I think I recollect; there is nothing in the peculiarity of the marks to guide me.

Cross-int. 8. (De bene.) Please look at your notes of the testimony of John A. Paine, and state whether it appears that he did or did not say that in sounding on the port side of the vessel on Monday morning he found the water eight feet deep twenty-five feet from her stern?

(Objected to as immaterial and incompetent, and for form.)

Ans. I find by the minutes that Mr. Paine said—"We sounded with

a pole eight feet aft, seven feet abreast the break of the deck," (or
419 about the break of the deck—I am not certain which word the abbreviation is for,) "and five feet at bows;" and, in another place, "the eight feet depth was half way from main rigging to stern; it's not far from fifty feet from main rigging to stern, ergo, measurement about twenty-five feet from stern." He probably said therefore, and not ergo. In the beginning of his testimony, he says he went on board on the twenty-ninth of October, about eleven o'clock in the morning; in another part of his testimony, on cross-examination, he says, "The first day we measured outside the vessel with a pole for the depths I have spoken of."

Cross-int. 9. (De bene.) Please state whether the witness Swett said anything at the trial in the district court about finding coal jammed into the vessel's planks or seams?

(Objected to as immaterial, and also because the proper foundation has not been laid.)

Ans. I do not find that he made the statement now enquired of.

Additional interrogatories by Mr. Lathrop, for the libellants, and answers of the witness thereto.

Int. 11. (De bene.) Please state whether J. A. Paine stated any other measurements in his examination in the district court?

(Objected to as immaterial and because no proper foundation has been laid.)

Ans. He said on recross-examination, "Twelve feet at the stern-post, on the port side of the post, close to the post."

Int. 12. You have said you remember a conversation testified to by a witness you think was Torrey, do you remember what that conversation related to?

(Objected to as calling for testimony not admissible in evidence, and because no proper foundation has been laid.)

Ans. I think I can recollect that it related to the position at which the vessel should be placed.

JOHN LOWELL.

420 EXHIBIT A.—C. W. L.—NOV. 12, 1866.

PIER No. 20, PORT RICHMOND,
Philadelphia, 186 .

Received, on account of freight,
dollars cents.

White ash coal.		Red ash coal.	
Tons lump.		Tons broken.	
" steamboat.		" egg.	
311 " broken.		" stove.	
" egg.		" chestnut.	
" stove.		" pea & dust.	
" chesnut.			
" pea & dust.			
311 Total.		Total.	

GEO. W. HUNTZINGER & CO.,
Office, 216 Walnut st., Philadelphia, miners & shippers of Locust Mountain, Mahanoy & Schuylkill white and red ash coal, of superior quality.

Shipped by Geo. W. Huntzinger & Co., in good order, on board the schr. called the Bowdoin, of Portland, whereof is master for this present voyage, and now lying in the river Delaware, port of Philadelphia, and bound for Oakman & Eldridge's wharf, Boston, Mass., below bridges, three hundred & eleven tons, of 2,240 lbs., of broken coal, (as per margin,) which I promise to deliver at the aforesaid port of Boston in like good order, (the dangers of the seas only excepted,) unto Messr. Crane & Fassitt, or their assigns, he or they paying freight for the same at the rate of one & $\frac{75}{100}$ dolls. per ton.

In witness whereof the master or purser of the said vessel hath affirmed to 5 bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void.

Dated at Philadelphia this 11th day of October, 1866.

Draws feet water, and was built at in 18 .

311 tons in the hold.
" on deck.

200 Cambridge st.

421 UNITED STATES OF AMERICA,
District of Massachusetts:

I, John G. Stetson, clerk of the circuit court of the United States within and for the district of Massachusetts, certify that the foregoing is the record, ~~as printed~~ under my direction, as required by the rules of said circuit court, for the hearing of said cause in admiralty.

CHARLES SAWYER ET AL., LIBELLANTS,
vs.
SAMUEL OAKMAN ET AL., RESPONDENTS.

Said cause having been set down for hearing, and having come on to be heard, when, to wit, Nov. 9th, 1868, the following order was entered, namely:

And now, it appearing that Nathan Clifford, associate justice of the Supreme Court of the United States, assigned to this circuit, and the judge of this circuit court, who is solely competent by law to
422 try this suit, is so related to, and connected with, one of the libellants as to render it improper for him, in his opinion, to sit in the trial of this suit—

Therefore ordered on the several applications of the respective parties, (both parties having appealed,) that the fact that the said circuit judge, solely competent as aforesaid to try the suit, is so related to, and connected with, one of the parties as aforesaid, be entered on the records of this court in said cause.

And it is further ordered that an authenticated copy thereof, with the proceedings in said suit, be forewith certified to the circuit court of the United States, next to be holden on the first Monday of April next at the city of New York, and the second circuit court of the United States, in the next adjacent circuit to this court.

In testimony whereof, hereunto set my hand and affixed the
423 seal of said circuit court at Boston, in said district of Massachusetts, this thirty-first day of March, A. D. 1869, and of the independence of the United States of America the ninety-third.

[L. S.] JOHN STETSON, *Clerk.*

424

425 Circuit court of the United States for the southern dist. of New York.

OAKMAN & AL., APPELLANT,
vs.
SAWYER & AL., APPELLEES.

A decree having been entered in the above-entitled cause in the district court of the United States for the district of Massachusetts for the appellees, and said cause having been appealed to the circuit court of the United States for the first circuit by the appellants, and said cause having been certified to this court for the reason that the presiding justice of said first circuit is a relative to one of the parties to said cause, that he cannot properly sit to hear said cause, and said appeal having been entered in the clerk's office of this court, and said appellees being about to move this court to have the said decree, made in said district court in said cause, carried into effect & subject to the judgment of this court or of the Supreme Court of the United States on appeal:

426 Now, on the 13th day of April, in the year 1869, before me,

Caleb William Loring, a commissioner duly appointed to take acknowledgment of bail, affidavits, and depositions, &c., within the district of Massachusetts, appeared personally, Charles Sawyer, of Portland, in the State of Maine, and, in behalf of himself and other appellees, submitting himself and themselves to the jurisdiction of this court, bound himself and themselves unto appellants herein, in the sum of one thousand dollars, that if said motion be granted by this court, the said appellees will abide and perform the decree of said circuit and Supreme Courts, if any they make in this cause, and pay the costs and expenses, if any, which may be awarded against them by the final decree of such courts; and unless they shall do so, they do hereby severally consent that execution shall issue forth against them, their heirs, executors, administrators, goods and chattels, wheresoever the same may be found, to the value of the sum above mentioned.

C. W. LORING,
Commissioner U. S. District Court for the District of Massachusetts.

427 (Endorsed:) U. S. circuit court, southern district of New York. Charles Sawyer et al., appellees, vs. Samuel Oakman et al., appellants. Bond of C. Sawyer. Filed Ap'l 15, 1869.

428

429 Circuit court of the United States for the southern district of New York.

CHARLES SAWYER ET AL., LIBELLANTS & APPELLEES,
vs.
SAMUEL OAKMAN ET AL., RESPONDENT & APPELLANTS.

And now on motion of Charles F. Blake, esq., of counsel for the appellants, H. D. Hadlock, esq., of counsel, appearing and opposing said motion, the appellee, Charles Sawyer, having complied with the opinion of the 133d rule of this court, it is ordered that the decree made in this cause, be carried into effect, subject to the judgment of this court, or of the Supreme Court of the United States, unless the appellants shall, within twenty days from the date of this order, give security by the stipulations of himself, and of two competent sureties for judgment of all damages and costs on the appeal in this court, and in the Supreme Court of the United States, in the full and just sum of ten thousand dollars.

430 (Endorsed:) U. S. circuit court, southern district of N. Y. Charles Sawyer et al., appellees, vs. Samuel Oakman, appellants. Order. S. B. W. Filed Feb'y 16, 1870.

431 Circuit court of the United States for the southern district of New York.

CHA'S SAWYER ET AL., LIBELLANTS & APPELLEES,
against
SAMUEL OAKMAN ET AL., RESPONDENT & APPELLANTS.

Whereas a decree having been entered in the above-entitled cause, in the district court of the United States for the district of Massachusetts, for the libellants and appellees, and said cause having been appealed to

the circuit court of the United States for the first circuit, and said cause having been certified to this court, by reason of the legal incompetency of the presiding justice of said circuit, and said appeal having been brought on for hearing in this court: It was ordered, on motion of counsel for the appellees, that said appellants stipulate with sufficient sureties, in the sum of ten thousand dollars, for cost and damages that may be awarded against them.

Now, on the fourth day of March, in the year eighteen hundred
432 and seventy, before me, Charles Demord, a commissioner duly appointed and empowered to take acknowledgements of bail, affidavits, etc., within the district of Massachusetts, appeared personally Samuel Oakman, of Somerville, in the State of Massachusetts, and on behalf of himself and the interests represented by Benjamin W. Eldridge, now deceased, and produces for sureties James Lee, jr., and J. Wade Davis, of Charleston, in the Commonwealth of Massachusetts; and the said Samuel Oakman, James Lee, jr., and J. Wade Davis, submitting themselves to the jurisdiction of the court above mentioned, bound themselves, their heirs, executors, and administrators in the sum of ten thousand dollars, unto Charles Sawyer, John B. Brown, Phillip Brown, John Brown, Henry Fox, Henry H. Furbush, and William Randall, all of Portland, in the State of Maine, that the said Samuel Oakman shall pay all damages, costs, and expenses which shall be awarded against him in this suit, upon the final adjudication thereof, or by any interlocutory order in the progress thereof; and unless he shall do so
433 they do hereby consent that execution shall issue forth against them, their heirs, executors and administrators, goods and chatels, wheresoever the same shall be found, to the value of the sum above mentioned, and I am satisfied that the said Davis and Lee, are each worth more than ten thousand dollars.

CHARLES DEMORD,
Commissioner of the U. S. Court for the District of Massachusetts.

(Endorsed:) U. S. circuit court, southern district of New York. Charles Sawyer et al., libellants & appellees, against Samuel Oakman et al., respondent & appellant. Stipulations. Filed March 5, '70.

434

435 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Monday, the 14th day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

CHARLES SAWYER ET AL., LIB'L'NT & APPELLEE,
vs.
SAMUEL OAKMAN ET AL., RESP'D'TS & APPELLANTS.

The appeal from the district court of the United States for the district of Massachusetts, coming on to be heard—

Mr. Lathrop reads evidence on the part of the libellants and appellees.

Mr. Hadlock reads evidence on the part of the resp'd'ts & app'l'ts.

Mr. Lathrop argues the case on the part of the libellants & appellees.

Mr. Hadlock argues on the part of the respondents & appellants.

436

437 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Tuesday, the 15th day of Feb'y, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

CHARLES SAWYER ET AL., LIB'L'NTS & APPELLEES,
vs.
SAMUEL OAKMAN ET AL., RESP'D'TS & APPELLANTS.

This case being still on argument—
Mr. Hadlock continues his arg'm't on part of respondent & appellants.
Mr. Lathrop is heard in reply. C. A. V.

438

439 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Saturday, the eleventh day of June, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Lewis B. Woodruff, circuit judge.

CHA'S SAWYER & AL.
vs.
SAMUEL OAKMAN.

Judge Woodruff renders his decision in the above cause, affirming the decree of the district court of the United States for the district of Massachusetts.

440

441 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 20 day of Nov., in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable Lewis B. Woodruff, circuit judge.

In admiralty.

CHARLES SAWYER ET AL., LIBELLANTS & APPELLEES,
vs.
SAMUEL OAKMAN ET AL., RESPONDENTS & APPELLANTS.

This cause having been heard on the pleadings and proofs on the appeal from the final decree of the district court of Massachusetts, and having been argued by the advocates of the respective parties, and due deliberation being had in the premises:

It is now ordered, adjudged, and decreed by this court, that said

decree of the district court for the district of Massachusetts be in all things affirmed.

And it is further ordered, adjudged, and decreed that the libellants, appellees, do recover against the said respondents, appellants, the sum of six thousand one hundred and fifty-three $\frac{41}{100}$ dollars, (6,153 41,) being the amount of damages to the said libellants by reason of the dam-
442 age and injury done to the schooner "Bowdoin" in said pleadings mentioned, and the costs of the libellants in the said district court, as taxed in said court. which it was adjudged by said final decree of said district court that the libellants recover against the said respondents.

And it is further ordered, adjudged, and decreed, that the said libellants, appellees, do recover against said respondents, as damages sustained by them, by reason of said appeal of said respondents, the interest on the amount of said damages and costs so adjudged by said decree in said district court from the date of said decree in said district court as aforesaid, (the third day of January, A. D. 1868,) besides their costs on said appeal to this court as taxed, amounting together to the sum of eighteen hundred and sixteen $\frac{64}{100}$ dollars ($1,816 64.) All of which said damages, costs, and interest amount in the aggregate to the sum of seven thousand, nine hundred and seventy $\frac{05}{100}$ dollars, (7,970 05,) which it is hereby ordered, adjudged, and decreed that the said libellants, appellees, do recover against the said respondents, appellants.

And it is further ordered, adjudged, and decreed, that, unless an appeal be taken from this decree within the time prescribed by law, a summary judgment therefor be entered in favor of the said libellants, appellees, and against James Lee, jr., and J. Wade Davis, (sure-
443 ties on said appeal, in the sum of ten thousand dollars, the amount of their stipulations by them given on said appeal,) and that said appellees have execution therefor to satisfy this decree.

L. B. WOODRUFF,
Circuit Judge.

444 (Endorsed:) U. S. circuit court, south. dist. of N. Y. In admiralty. Charles Sawyer et al., libellants & appellees, vs. Samuel Oakman et al., respondents & appellants. On appeal from the U. S. district court of Mass. Final decree. Filed Nov. 30, 1870.

445 Circuit court of the United States for the southern dist. of New York.

CHARLES SAWYER, LIB'L'NT & APPELLEE,
v.
SAMUEL OAKMAN ET AL., RESPONDENTS & appellants.

The above-named respondents, conceiving themselves aggrieved by the decision entered in this court on the eleventh day of June, A. D. eighteen hundred and seventy, affirming the final decree entered in the United States district court for the district of Massachusetts, do hereby appeal therefrom to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in the cause, duly authenticated, may be sent to the said Supreme Court.

HENRY D. HADLOCK,
Counsel for the Respondent & Appellants.

446 (Endorsed:) U. S. circuit court, southern dist. of New York. Charles Sawyer & als., libellants, &c., vs. Samuel Oakman, respondent. Respondent's appeal. Filed Oct. 18, 1870. H. D. Hadlock, counsel for respondents.

(Endorsed:) U. S. circuit court, southern district of New York. Charles Sawyer & als., libellants, &c., vs. Samuel Oakman, respondents. Respondent's appeal. Filed Oct. 18, 1870. H. D. Hadlock, counsel for respondents.

447 Circuit court of the United States for the southern district of New York in the second circuit.

CHARLES *Lawson* & OTHERS, LIBELLANTS & appellees,
vs.
SAMUEL OAKMAN & ANOTHER, RESPONDENT & appellant.

Know all men by these presents, that we, Samuel Oakman, Daniel Palmer, J. Wade Davis, all of Boston, in the State of Massachusetts, are jointly and severally held, and firmly bound unto the above-named Charles Sawyer & others, in the sum of twelve thousand dollars, to be paid to the said Charles Sawyer and others; for the payment of which well and truly to be made, we do bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated the twenty-eighth day of October, A. D. 1870.

Whereas the above-named Samuel Oakman & another have
448 prosecuted their appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of *of* this obligation is such that if the above-named Samuel Oakman & another shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

SAMUEL OAKMAN.
DANIEL PALMER.

Sealed & delivered & taken and acknowledged this 28th day of October, A. D. 1870, before me.
EDWIN T. NASH.
A. N. TROWBRIDGE.

449 UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Samuel Oakman, Daniel Palmer, & J. Wade Davis, being severally duly sworn, depose and each for himself says that he is severally worth the sum of twelve thousand dollars over and above all his just debts and liabilities.

Sworn to this 28th day of October, A. D. 1870, before me.
JOHN STETSON,
Clerk U. S. Cir. C't, Mass. Dist.

450 (Indorsed:) U. S. circuit court. Charles Sawyer et al. vs. Samuel Oakman et al. Bond for costs, &c., on appeal.

Approved Nov. 1st, 1870.

L. B. WOODRUFF, *Circuit J.*

Filed Nov. 1, 1870.

451 By the Honorable L. B. Woodruff, one of the judges of the circuit court of the United States. for the southern district of New York, in the second circuit, to Charles Sawyer, John B. Brown, Philip Brown, John Brown, Henry Fox, Henry H. Furbush, & William Randall:

Whereas, Samuel Oakman and Benjamin W. Eldridge, have lately appealed to the Supreme Court of the United States, from the whole and every part of a decree lately rendered in the circuit court of the United States for the southern district of New York in your favor, against the said Samuel Oakman and Benjamin W. Eldridge, and they have filed the surety required by law:

You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, in the District of Columbia, on the first Monday of December, to do and receive what may appertain to justice to be done in the premises.

452 Given under my hand, and seal at the city of New York, in the southern district of New York, in the second circuit, on the 2d day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety fifth.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) U. S. circuit court. Charles Sawyer et al. vs. Samuel Oakman et al. Citate.

BOSTON, *Nov.* 10, 1870.

Legal service of the within citation was this day made upon me.

JOHN LATHROP,
Proctor for Appellee.

Filed Nov. 11, 1870.

453 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 452 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Charles Sawyer et al., libellants & appellees, against Samuel Oakman et al., claimants & appellants, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 30th day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE, *Clerk.*

[5-ct. int. rev. stamp affixed and canceled.]

(Indorsement on cover:) No. 392. Samuel Oakman and Benjamin W. Eldridge, appellants, vs. Charles Sawyer, John B. Brown, et al. S. New York, C. C. U. S. Filed 12th December, 1870.

Supreme Court of the United States.

SAMUEL OAKMAN ET AL.,

RESPONDENTS AND APPELLANTS,

v

CHARLES SAWYER ET AL.,

LIBELLANTS AND APPELLEES.

LIBELLANTS' ARGUMENT,

JOHN LATHROP, EDWIN H. ABBOT AND LEONARD A. JONES,

FOR THE LIBELLANTS.

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS, 34 SCHOOL STREET.
1872.

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CHARLES SAWYER ET AL., LIBELLANTS AND APPELLEES.

BRIEF FOR APPELLEES.

STATEMENT OF FACTS.

THE undisputed facts in this case are, that, in the month of October, 1866, the schooner "Bowdoin," of Portland, Maine, of the burden of two hundred and twenty-six tons, old measurment, came to Boston with a cargo of coal, which by the bill of lading was to be delivered at a wharf belonging to the appellants in Charlestown. The vessel arrived at the wharf on the 22d of October. On reporting her arrival, her master was required by the appellants to await the discharge of two other vessels, and she was accordingly laid at the outer end of the wharf, and there remained until Saturday, the 27th. The dock was of such depth of water that vessels could enter only at high tide; and when, on the afternoon of Saturday, the second of the two vessels above mentioned was hauled out, the "Bowdoin" made an effort to enter, but on account of the ebb tide did not succeed. The master was then requested by the foreman of the wharf, the agent of the appellants, to haul in to the wharf the next day, so as to be ready to discharge on Monday morning. On the 28th, the vessel hauled in and made fast, and on Monday morning was found to be badly hogged and strained, and requiring extensive repairs.

The libellants contend that the injury was caused by a pile of coal which had fallen into the dock from the wharf. The appellants set up in their answer that there were two berths at the wharf, with an abrupt descent between them, and that the vessel when hauled in, was placed partly in one berth and partly in the other, and that the damage was owing to this descent. At the trial in the Circuit Court, they attempted to show that the vessel was not placed parallel with the wharf when she was hauled in, and that her stern was at such a distance from the wharf that her amidships were over a mud bank between the easterly and westerly wharves.

The dock of the appellants was about three hundred feet in length, and was narrower at the shore end than at the outer end. This change in the width was at a point one hundred and twenty-five feet from the head of the dock, and was caused by a jog in the easterly wharf about five feet in depth. On the easterly wharf, five feet from the capsill, was a bulkhead fifteen feet high, extending above the jog fifty-seven feet nine inches, and below the jog about sixty feet. On the top of this bulkhead was a run six feet wide, with a movable stage.

See Clapp, p. 244, ints. 9, 10.
Oakman, p. 130, cross-ints. 5–13.
Exhibits 2, 4.

The case was fully heard before Judge Lowell, of the District Court of the United States for the District of Massachusetts, and on appeal, by Judge Woodruff, of the Circuit Court of the United States for the Southern District of New York. Both judges decided in favor of the libellants. Their opinions are published in 7 Blatchf. C. C. 290. The case now comes before this Court on appeal.

BRIEF.

I. THE LOCAL LAW OF MASSACHUSETTS REGULATING THE OBSERVANCE OF SUNDAY HAS NO APPLICATION TO THIS CASE.

The first question presented is as to the effect of the Sunday law of Massachusetts on the right of the libellants to recover. The eleventh article of the respondents' answer sets up in defence "that said schooner 'Bowdoin' was hauled into the place in which she received the injury complained of, on the Lord's Day, and the hauling her into that place was not a work of necessity or charity, and was in violation of the laws of the Commonwealth of Massachusetts; and, so the respondents say, the libellants cannot recover damages for any injury received in, or in consequence of, the doing of such illegal act."

This statute is as follows: "Whoever keeps open his shop, warehouse or workhouse, or does any manner of labor, business, or work, except works of necessity and charity, or is present at any dancing or public diversion, show or entertainment, or takes part in any sport or game or play, on the Lord's Day, shall be punished by a fine not exceeding ten dollars for every offence."

General Statutes, c. 84, § 1.

The appellants contend, on the authority of Gregg *v.* Wyman, 4 Cush. 322, that the above article in their answer is a good defence to this action. In Gregg *v.* Wyman, a stable keeper let a horse on Sunday to be driven to a particular place. The hirer injured the horse by immoderate driving beyond the place designated. The Court held that the stable keeper could not maintain an action for the injury done to the horse, because, as part of his case, and to make out his claim, he had to show an illegal act on his part, viz., the contract made on the Lord's Day.

The question presented in Gregg *v.* Wyman, was not as to the proper construction of a statute, but as to the effect of the violation of the statute by the plaintiff on his right to recover. This was no part of the construction of the statute, but the application of a general principle of

law; as stated by Judge Lowell, in his decision in this case in the District Court: "The fact that the act was prohibited by a State statute had nothing to do with that part of the case. It might as well, for all the purposes of the decision, have been one which was illegal at common law, or by a statute of the United States."

This rule of the State court, which Mr. Justice Grier calls the doctrine of "set-off" in cases of tort, has not received the sanction of the courts of the United States.

Philadelphia R. Co. *v.* Phila. Steam Towboat Co. 23 How. 218.
Powhatan Steamboat Co. *v.* Appomattox R. Co. 24 How. 256.
The Steamboat Metropolis, U. S. D. C., Southern District N. Y. 1861, *Shipman*, J., cited 1 Parsons on Shipping, 597.

In this last case, Bosworth *v.* Swanzey, 10 Met. 363, which holds that a person travelling on the highway on Sunday cannot recover for a defect in the highway, was cited. The learned judge said: "The application of the doctrine of that case to cases of collision would be a novelty in maritime law."

This view was adopted by Judge Lowell and Judge Woodruff, and, if followed here, renders further consideration of the point unnecessary.

Even if the Massachusetts law were the rule in this Court, we submit that:

1. *This statute was not intended to apply to the navigation of vessels.*

The Sunday law is an inheritance from the Puritans, and they received it from the mother country, and that from the civil law. No case can be found in the books where it has been applied to the navigation of vessels, directly or indirectly.

By the civil law, the rules for the observance of Sundays and other holidays were not allowed to interfere with the necessities of commerce, or to extend to ships or to those who navigate them.

Richardson *v.* Goddard, 23 How. 28.

2. *If the statute did in terms apply to vessels, or if such a construction had been given to it by the State courts, it would not be binding on a Court of the United States, sitting in Admiralty, in any matter affecting the regulation of commerce, or the general law merchant.*

If this statute does apply to vessels on the high seas and navigable waters within the body of the State, then it prohibits the sailing, arrival and moving of vessels on Sunday, and so far undertakes to regulate commerce.

If the State can do this in reference to Sunday, it can do the same in reference to any and every day in the week, for the Constitution of the United States recognizes no difference between Sundays and other days, and thus may close all its ports, and so not only regulate but annihilate commerce, and deprive the United States of the benefits of all revenue derived from imports within its borders.

If the construction contended for by the appellants is correct, then every sailor who pulls a rope, or helps to hoist an anchor, every pilot who takes a vessel in or out on Sunday, is guilty of a breach of law, and may be punished therefor, whether the act be committed on board of a merchant vessel or a ship of war.

The maritime law makes no distinction between Sunday and other days of the week. It may probably be safely asserted that the words "Sunday," "Sabbath" or "Lord's Day," are not to be found in any book or treatise treating of matters of Admiralty Jurisdiction, and that no Court of Admiralty would pronounce a capture illegal because it occurred on Sunday, or refuse damages in a cause of collision because the injured vessel was sailing on Sunday, or deny his wages to a sailor for the work he performed on a Sunday, or refuse compensation to a salvor because the service was rendered on a Sunday, or deny contribution in general average to the owner of a vessel voluntarily stranded on a Sunday.

The exception recognized by the civil law before stated, applies to all such cases, and of course to the present.

See Philadelphia R. Co. *v.* Philadelphia Steam Towboat Co. 23 How. 219, per Grier, J.

Ulary *v.* The Washington, Crabbe, 208.

The rule that the courts of the United States should respect the in-

terpretation given to a State statute by the State courts, is not of general application.

It applies to cases of real estate, because the *lex rei sitæ* is the only rule which can apply; also to cases where the Federal Government has no control, as in respect to charities, the regulations of which it has been held are exclusively matter of State jurisdiction, the prerogative power belonging to the British sovereign, not being vested in the United States.

But it does not apply to those cases in which, by the Constitution of the United States, Congress, and the courts created thereby, are vested with exclusive or concurrent jurisdiction over contracts or torts.

In such cases, the United States courts pay regard to the general principles of the law, as expounded in their own decisions and by other authorities, and do not feel bound by the decisions of the local tribunals.

The rule certainly could not apply to a statute of a State regulating commerce.

3. *Assuming, however, for the purpose of the argument, that the State law applies to vessels, and that this Court will follow the doctrine laid down in Gregg* v. *Wyman*, 4 *Cush.* 322, *it is contended that the libellants are still entitled to recover, because,* —

First. It does not appear that the damage was done on Sunday. The presumption on the evidence is to the contrary. No damage was discovered until Monday morning. Randall, p. 13.

The listing off did not happen until Monday.

Swan, p. 81, int. 25.

It has not been held in the State courts that, if an act is commenced on Sunday, prolonged into Monday, when the damage is done, the *tort feasor* is excused.

See Stebbins *v.* Peck, 8 Gray, 553.

Second. If the libellants were acting in violation of the statute, and exposing themselves to a penalty, they were not under the necessity of

proving it in order to maintain their action, and may therefore recover according to the decisions of the State court.

Spofford *v.* Harlow, 3 Allen, 176.

Welch *v.* Wesson, 6 Gray, 505.

Boardman *v.* Merrimack Ins. Co. 8 Cush. 583.

Steele v. Pourkhardt, 104 Mass. 59.

Third. Even if the damage were done on Sunday night, this would not prevent the libellants from recovering. They were not at that time violating the law. The violation had ceased some hours before. If a man should travel on Sunday, in violation of the statute, and some hours after reaching his destination should be assaulted, would it be held that he could not recover because of his previous violation of the law?

See Powhatan Steamboat Co. *v.* Appomattox R. 24 How. 247.

Fourth. If the moving on Sunday were a proper thing to be done for the prevention of possible damage to this or other vessels, it was not a breach of the law.

Commonwealth *v.* Knox, 6 Mass. 76.

Pearce *v.* Atwood, 13 Mass. 345.

Flagg *v.* Millbury, 4 Cush. 243.

The end of a wharf must necessarily be a more exposed place than the sides; and the wharf where the "Bowdoin" was lying seems to be in a particularly dangerous place.

Randall, p. 8, cross-int. 33.

The "Bowdoin" had her boat stove there.

Randall, p. 6, int. 7.

And some years ago, a vessel of the appellants was injured while lying there, by a vessel running into it.

Oakman, p. 134, cross-ints. 59, 60.
The case is reported in 2 Sprague, 16.

The vessel, at the time that the accident happened, was in the dock, by the permission of the respondents, and in pursuance of their directions, given on Saturday, to come in on Sunday. To provide a proper dock for her, after she was in, was a work of necessity, and was therefore not unlawful, and it is for the breach of this duty that the libellants sue.

Powhatan Steamboat Co. *v.* Appomattox R. 24 How. 256.

II. THE FINDINGS OF THE COURTS BELOW ON QUESTIONS OF FACT SHOULD BE FOLLOWED.

Aside from the question of the effect of the Sunday law, the appellants' case rests upon questions of fact, which are controverted by the libellants, and which depend upon the credibility of witnesses. The appellants had the benefit of having all their witnesses examined orally in the District Court, and that Court pronounced against them. This decision was sustained by the learned judge of the Circuit Court, and it is submitted that the well-established rule of this Court should be followed, viz, that where the case depends altogether on the credibility of witnesses, the decision below will not be interfered with.

The Water Witch, 1 Black, 500.
Newell *v.* Norton, 3 Wall. 268.
The Hypodame, 6 Wall. 223.
The Quickstep, 9 Wall. 665.

This rule is especially appropriate in this case, since several of the appellants' witnesses have seen fit to change their evidence on material points from that given in the District Court.

This appears from Judge Lowell's deposition, and it is relied on to show the following discrepancies in the evidence.

Mulliken (p. 65, int. 13) testifies, that, after the vessel was hauled ahead, the after part of the rudder stuck out six feet by the jog.

In the District Court, he testified that the stern was by the jog one bay, or eight or ten feet, and that he measured as near square to sternpost as possible. (Judge Lowell, p. 261, ans. to int. 5.)

The foundation for this inquiry is laid p. 110, cross-int. 9.

Keating testifies (p. 71, cross-int. 10) that it was between three and four that he had the conversation with the mate.

In the District Court, he testified it was between four and five. (Judge Lowell, p. 261, int. 6.) This is a material discrepancy on account of the tide.

The foundation for this is laid p. 71, cross-int. 14.

Keating testifies (p. 69, int. 10) that he told the mate on Sunday, "If you let your vessel ground there you'll certainly hurt her . . . . you'll find that if you let your vessel ground there she will certainly get injured.'

In the District Court, he testified, on direct examination: "Don't recollect that I said anything about injury to his vessel, — not sure whether I did or not." On re-examination, "Think I told the mate his vessel would be hurted if it lay there." Re cross, "I said I couldn't pos. [which means positively] swear." (Judge Lowell, p. 261, int. 6.)

The foundation for this is laid p. 71, cross-int. 17.

Swan (p. 80, int. 18) gives twenty to twenty-five feet as the distance the "Bowdoin" was hauled ahead.

In the District Court, he testified it was twenty feet six inches. (Judge Lowell, p. 202, int. 8.)

The foundation for this is laid p. 84, cross-int. 7.

Torrey testifies (p. 88, int. 11) that Colman told the mate "to haul his vessel till his main hatch, the after combing, came opposite a post in the bulkhead," and in answer to int. 12, says he was three feet off at the time.

In the District Court, he testified: "Heard Captain C. tell mate of 'Bowdoin' where he should place the vessel; they were then standing at place where he ordered him to haul his main hatch; not being very near I couldn't understand exactly." On cross-examination, he says, "I was standing on the wharf fifteen or twenty feet from them, doing nothing . . . . *think* he told him to bring the after part of his hatch." (Judge Lowell, p. 262, int. 10.)

The foundation for this is laid p. 147, cross-ints. 38, 39.

The deposition of Judge Lowell is admissible in evidence.

The Judge says that he intends to take full notes, and that the notes in this case appear to be full. (P. 261, ints. 3, 4.) He also says he intends to write down all that a witness says, — the exact language. (P. 263, cross-int. 5.)

The question here is not whether the notes of a judge are admissible in evidence, when the judge is not called as a witness; though it has been held that they are admissible in such a case.

Doe dem. Lonchester *v.* Murray, 1 Allen, N. B. 216.

The witness is asked to refresh his recollection by the notes, and to state what the witnesses said, and he does so. It can make no difference, that he cannot recollect, apart from his notes.

See 1 Greenl. Evid. § 437, n. 3, (12th Ed.)
Rhine *v.* Robinson, 27 Penn. State, 30.
Philadelphia R. *v.* Spearen, 40 Penn. State, 300.
Chess *v.* Chess, 17 S. & R. 409.
Perkins *v.* Augusta Ins. Co. 10 Gray, 312.

The witness also recollects apart from his notes, that Torrey testified that he was at a considerable distance from the place of the conversation in regard to the position of the vessel. (P. 263, cross-int. 1; p. 264, int. 12.)

III. THE VESSEL WAS AT THE WHARF OF THE APPELLANTS ON BUSINESS AND NOT AS A MERE LICENSEE.

There seems to be no dispute on this point.

The appellants are owners of a coal wharf. Their business consists partly in unloading cargoes for other people, for compensation, and partly in unloading and selling their own coal and other materials.

Oakman, p. 253, cross-int. 14.

By the bill of lading in this case, the coal was to be delivered to Messrs. Crane & Fassitt, or their assigns, at Oakman & Eldridge's wharf. (P. 264.)

The coal had been bought by the Union Sugar Refinery. (Randall, p. 5, near end of int. 4.)

The vessel went to the wharf of the appellants, was directed where to lie, was afterwards discharged there, and the master paid the bill. (Randall, p. 4, int. 4; p. 5, int. 6.)

The fact that the appellants also used their wharf for their own business, can make no difference.

The law on the subject of the duties and obligations of the parties is well settled.

1. *It was the duty of the appellants to provide a safe and proper place for the vessel to lie while using the wharf; and, if any part of the dock or wharf, apparently safe and suitable for that purpose, was, in fact, unsafe, and known to the appellants to be so, it was the duty of the appellants to make this danger known to the libellants. Not having done so, they are liable for the injury sustained by the vessel.*

Thompson *v.* North Eastern R. Co. 2 Best & S. 106, 7 Jurist, N. S. 307, 8 id. 991.

Parnaby *v.* Lancaster Canal Co. 11 A. & E. 223.

Mersey Docks *v.* Penhallow, 7 H. & N. 329.

Gibbs *v.* Trustees of Liverpool Docks, 3 H. & N. 164.

Mersey Docks *v.* Gibbs, 11 H. L. Cas. 686, Law Rep. 1 H. L. 93.

Pittsburg City *v.* Grier, 22 Penn. State, 54.

Wendell *v.* Baxter, 12 Gray, 494.

Carleton *v.* Franconia Iron Co. 99 Mass. 216.
Barrett *v.* Black, 56 Maine, 498.

In some cases, it is held that there is no obligation upon a person to keep his premises in repair, when injury is sustained by one who is on the premises merely by virtue of a license, express or implied.

This principle, however, has no application, when the person or property injured is present on business.

In Chapman *v.* Rothwell, 1 Ellis B. & E. 168, Erle, J., states the rule thus: "The distinction is between case of a visitor, who must take care of himself, and a customer, who, as one of the public, is invited for the purposes of business carried on by the defendants."

This distinction is fully sustained in

Southcote *v.* Stanley, 1 H. & N. 247.
Corby *v.* Hill, 4 C. B. N. S. 556.
Indermaur *v.* Dames, Law Rep. 1 C. P. 274, 2 C. P. 311.
Freer *v.* Cameron, 4 Rich (S. Car.) 228.
Elliott *v.* Pray, 10 Allen, 378.
Sweeny *v.* Old Colony R. 10 Allen, 368.
Carleton *v.* Franconia Iron Co. *supra*.

On the principles derivable from the above cases, it is submitted that, if it is essential for a vessel's safety that she should lie exactly at a certain place at a wharf, it is the duty of the person in possession of the wharf, either to warn the master of the danger, or else to have some one, when the vessel comes in, to see that she is properly placed, and that it is not sufficient to give general directions as to where the vessel is to haul, if such directions are given for the purpose of notifying the master on what part of the wharf he is to discharge; and he can discharge on this part of the wharf without going to the exact place where the vessel can lie in safety.

IV. The Master of the Vessel Used Ordinary Care.

This may be considered under the following heads:

1. *The vessel was placed parallel to the wharf, the day she was hauled in.*
2. *Proper fenders were placed between the vessel and the wharf.*
3. *There was no obligation on the part of the master to sound.*
4. *The directions given to the master as to where he was to place his vessel were substantially complied with.*

1. *The vessel was placed parallel to the wharf the day she was hauled in.*

The appellants, assuming that on Sunday the vessel was laid with her bow close in to the wharf, and her stern five to ten feet from it, call experts to prove that such a position is a negligent one.

There is, however, no evidence that she was placed in this position on Sunday.

Of the appellants' witnesses, Haskell, p. 48, Torrey, p. 87, Barbour, p. 241, Keating, p. 69, are those alone who saw the vessel on Sunday, and yet not one of these men is asked the question whether the vessel was laid properly at the wharf or not.

The evidence of the libellants proves conclusively that she was laid parallel with the wharf on Sunday, and properly made fast.

Randall, p. 7, cross-int. 21; p. 216, int. 9.
Bryant, p. 11, int. 5; p. 210, int. 41; p. 214, cross-int. 73.

The theory that the vessel was not laid parallel with the wharf when she was hauled in, is entirely unsupported by evidence.

No defence of this sort is set up in the answer, and is therefore not open to the appellants now.

This theory was started after much of the evidence had been taken, and many witnesses were recalled to show how the vessel lay on Monday morning, and then experts were called in to show that if the vessel lay in the position represented on Monday morning, she could not have been properly laid to, and fastened at, the wharf on Sunday.

There is no agreement among the witnesses for the appellants as to the position of the vessel on Monday.

Colman (p. 54, int. 28) says "she was at the east berth, partly hauled in to the berth, and listed off to port."

Mulliken, when first examined (p. 64), is not asked the position of the vessel the first day. On being recalled, he puts her stern only five feet further off than her bow (p. 158, int. 3).

Keating (p. 69, int. 6) places her close to the wharf.

Burnett, when first called, says, merely, "Well, she was listing off at the time I went down" (p. 74, int. 8). When recalled (p. 160. int. 2), he says, "She lay listed off, with her stern considerably further out than her bow." Int. 3, he puts the stern eight or nine feet further off; cross-int. 9, says stern might be eleven feet off. Cross-int. 3, says the keel at the bow was two and a half feet more than the width of the vessel from the foot of the wall. The keel, therefore, was not, in the opinion of this witness, between the keel track and the wharf, as some of the witnesses pretend.

Swan (p. 81, int. 25) says: "She was very near upright when I moved the stage down; before I got the purchases up on board the 'Bowdoin' for the stage, she was listed over so far that my stage wasn't long enough to reach from the bulkhead to the hatchway."

Woolley (p. 116, int. 15) puts the stern twenty to twenty-five feet from the wharf, and her bow close to the wharf, about half way from the jog to the head of the dock. (This would bring her stern forty feet below the jog, which no one else pretends to say but Woolley.) Woolley also says: "She wasn't really heeled a great deal either way .... If anything, she was heeled towards the wharf." (P. 116, int. 18).

Oakman puts her stern post twenty-five or thirty feet from the wharf. (P. 131, cross-int. 31).

The libellants prove that the vessel was parallel, or nearly parallel, to the wharf on Monday morning, with her bow in the keel track, and the reason that one could not step on at the stern was, that the rail was below the capsill, and the vessel had listed off.

Pierce, p. 228, cross-ints. 20, 21.
Paine, p. 231, ints. 3, 4; p. 232, int. 11, 12.
Tower, p. 204, int. 13.
Randall, p. 216, int. 21.
Swett, p. 239, int. 6.

There was nothing in the position of the vessel on Monday to indicate that she had not been properly laid at the wharf on Sunday.

Pierce, p. 226, int. 4.
Paine, p. 232, int. 8.
Tower, p. 204, int. 13.
Swett, p. 238, int. 2.

The position was attributable to the coal in the dock.

Pierce, p. 226. ints. 5, 6.
Tower, pp. 204, 205, ints. 13, 15.
Randall, p. 5, int. 4.
Paine, p. 232, ints. 9, 10.
Swett, p. 239, int. 3; p. 380, int. 5.

If the vessel had been in the position in which the appellants claim she was, her bowsprit or jib-boom would have been over the wall at the side of the dock.

Paine, p. 232, int. 13.
Swett, p. 239, int. 8.
Woolley (appellants' witness, p. 118, cross-int. 16).

The libellants prove that neither the jib-boom nor bowsprit was over the wall, and the appellants do not contradict this position.

Pierce, p. 227, int. 7.
Paine, p. 232, ints. 14, 15.
Swett, p. 239, int. 11.

If this vessel had been in such a position, it is evident that no one standing at the head of the wharf could have seen between the vessel on her starboard side and the wharf. Yet Oakman says he, standing at the wall at the head of the dock, could see between the vessel and the wharf.

P. 126, int. 29.

2. *Proper fenders were placed between the vessel and the wharf.*

The appellants contend that the vessel was guilty of negligence in not putting in proper fenders.

To render this question a material one, the appellants must show that the want of proper fenders contributed to the accident. And if they should show this, to enable them to take advantage of it, they should have set it up in their answer. No such defence is, however, set up.

It is obvious, if the vessel had been in the position in which the appellants place her, that the want of fenders did not contribute to the injury. White, a witness for the appellants, says: "In the position she was lying in, fenders would have had no effect at all."

White, p. 109, int. 29.

It is conclusively proved that the vessel had out the proper fenders.

Randall, p. 8, cross-ints. 23–27, p. 216, int. 10.
Bryant, p. 208, int. 19.
Paine, p 232, int. 18.
Swett, p. 239, ints. 15, 16.

The appellants' witnesses, Keating, Haskell, Torrey and Barbour, saw the vessel after she was hauled in, and not one of them is asked whether the vessel had her proper fenders out on Sunday.

To prove that fenders were not put out on Sunday, the appellants rely on the evidence of their employees that they did not see fenders on Monday at a time when it is not remarkable that they did not notice them.

There is no pretence on the part of the libellants, that they had out on Sunday what is called the big spar fender, which was put between the vessel and the wharf after the vessel was hauled ahead.

This fender was forty to fifty feet long (Colman, p. 64, cross-int. 50) and twenty inches thick. (Swan, p. 87, cross-int. 46.) It was fastened to the side of the opposite wharf, and lay across the head of the dock, quartering. (Swan, p. 83, int. 51; p. 86, cross-int. 45.)

From the evidence of the appellants, it would seem that they supposed that the libellants claimed that this spar fender was put in on Sunday.

Randall (p. 8, cross-int. 24) says, that one of the fenders which he had in he had picked out of the dock. But it is evident that he did not mean this big spar fender, for he says his fenders kept the vessel from the wharf he should judge a foot forward and about nine inches aft.

(Randall, p. 8, cross-int. 27.) Randall afterwards tells about getting the fender out of the dock. (P. 221, cross int. 45, *et seq.*)

The object of a vessel's fenders is to keep the vessel from chafing; and to keep the channels or chain-plates from catching on the cap of the wharf.

Blaney, p. 184, int. 18.
Ricker, p. 190, int. 11.
Steelman, p. 201, int. 10.

It appears, from the evidence, that up and down fenders are sometime placed between the fore-and-aft fenders and the wharf; but this must be merely for the purpose of placing the vessel at a certain distance from the wharf, in order that she may take ground in safety; and it is therefore the duty of the wharfinger to notify the master that this is necessary, if he wants it done. See *infra.*

Steelman testifies that it is not customary to have up and down fenders inside of fore-and-aft fenders. (P. 201, int. 9.)

The wharf at which the vessel lay was so constructed as to obviate the necessity of using fenders.

Oakman is asked what there was outside the stone wall, and answers: "Fender posts driven; the object of which is that vessels may lay easy. They would 'nt lay easy against a stone wall,—would chafe." (P. 133, cross-int. 47.)

If a vessel has no fender between her and the wharf, and is damaged by rubbing against the wharf or by catching on the capsill, her owners could not recover; but when a vessel, in order to take ground in safety, is obliged to lie at a certain distance from the wharf, it is undoubtedly the duty of the wharfinger to see that proper fenders are used, or to notify the master of the danger.

Crocker, p. 179, int. 12.
Blaney, p. 183, int. 12.
McKie, p. 172, int. 9.
Davison, p. 186, int. 20.
Elliott, p. 229, int. 4.
Smith (appellants' witness), p. 114, cross-int. 31.

This large fender the appellants thought it was necessary to put in after the vessel was hauled ahead, for the purpose doubtless of keeping the vessel off the coal.

Oakman, p. 125, int. 21; p. 132, cross-int. 34.

The libellants cannot be held to be in fault for not having this fender out. It was a fender used in the berths where vessels lay afloat, and the master had no reason to suspect that it was necessary for him to use it.

Oakman, p. 132, cross-ints. 35–37.

The question is asked several witnesses of the appellants, Whether a vessel putting in the usual fenders would not fall into the same bed that other vessels had lain in.

This question is clearly objectionable; for whether a vessel would do so or not must depend upon her being of the same length, width, and flatness, as is stated by Gardner, one of the appellants' witnesses (p. 248, cross-ints. 3, 4); and must also depend upon the question whether there is anything in the berth which will prevent her from remaining there.

3. *There was no obligation on the part of the master to sound.*

It is not customary for vessels to sound in going into a dock.

McKie, p. 172, int. 5.
Elliott, p. 229, int. 5.
Paine, p. 233, int. 23.
Randall, p. 216, int. 19.

The master has a right to rely upon the presumption, that the dock is in good order. None of the cases in which wharf owners have been held liable contain any suggestion that it is incumbent on the master of a vessel to sound.

4. *The directions given to the master as to where he was to place his vessel, were substantially complied with.*

There is some discrepancy in the evidence as to the precise directions

given to the master. If the view which we take as to the law on this point is correct, there will be no need of considering the testimony.

The appellants rely on the proposition, that, if the vessel was not in the exact place pointed out by the appellants, the libellants cannot recover. This proposition cannot, however, be maintained. The libellants' vessel was at the wharf not as a licensee, but for the purposes of business. In all the cases where wharf owners have been sued, the questions have been whether the plaintiff used ordinary care, and whether the defendant gave notice of the defect.

If the Court should be of the opinion that the master did not literally obey the directions given by the appellants, or their agents, he was not therefore guilty of want of ordinary care, as he hauled within a few feet of the place, and did not wilfully disobey the directions, and had no cause to suspect that a literal obedience was essential to his safety.

"The advice or the direction given to the master of the 'Bowdoin' was not such as either to inform him of the condition of the bottom, or to suggest to any one who was ignorant thereof, that a difference of a few feet in the location of his vessel was of the slightest moment. The direction given to him, in regard to placing his vessel, had obvious reference to the convenience of the respondents in discharging the coal. It would suggest nothing else. It was given in connection with the movable stage used in discharging; and having the matter of discharging the coal in his mind, what he did was in substantial compliance with the direction."

Judge Woodruff, 7 Blatchf., C. C. 304.

Both hatches of the "Bowdoin" were above the jog, as she lay before she was hauled ahead, and even if they had been below, there would have been no difficulty in unloading her, for the run, as it is called, extends some distance below the jog, and is no farther from that part of a vessel which lies below the jog than it is from that part which lies above, and the movable stage can be taken to any part of this run.

Colman, pp. 60, 61, cross-int. 3, 7; p. 62, cross-int. 31, 32.

The engine used for discharging at this berth is also a movable engine, and can be placed where it is required.

Bray, p. 154, cross-ints. 6, 7, 8.

In Thompson *v.* Northeastern R., 2 Best & S. 106, 7 Jurist, N. S. 307, 8 Jur. N. S. 991, where it was alleged that damage to a ship was caused by the neglect of the plaintiffs to observe certain warnings that were given, it was held that, even if this were so, it would not prevent the plaintiffs from recovering, "unless the circumstances were such that the attempt to navigate the ship under the circumstances was an act of imprudence which no man of ordinary prudence would have committed. To raise that issue would have been altogether inconsistent with the case the defendants were most anxious to establish, viz., that there had been no negligence whatever on their part."

On the evidence we claim that, —

First. The directions were, to place the main hatch under or abreast of the movable stage.

Randall, the master of the "Bowdoin," swears that, on Saturday afternoon, the foreman told him to haul his hatch under the coal stage where the "Daybreak" had discharged her cargo. (P. 5, int. 4.) "All the directions I had was, to place my main-hatch under the coal stage, where the coal stage lay." (P. 8, cross-int. 34; p. 10, cross-int. 60.) He says Bryant & Kirwan [Curren] were present. (P. 8, cross-int. 35.)

Bryant, the mate, also swears the directions were given on Saturday afternoon. "He told him to haul his main-hatch abreast of the staging, — the discharging staging." (P. 11, int. 4.)

Curren (p. 12, int. 2) confirms the master and mate. "He told the captain to place his vessel under the stage."

Bryant admits that he had a conversation with the foreman on Saturday morning, on the wharf opposite the one at which his vessel lay, after the "Daybreak" had hauled out. "He pointed across to the staging, and said our main-hatch wanted to be abreast that staging." (P. 11, cross-int. 1; p. 12, cross-int. 8–15.)

Colman says he gave directions to the mate on Saturday afternoon, about six o'clock, to haul the after part of the main-hatch opposite a post in the bulkhead, and told the mate when the stage above was swung square, he would be about right, told him not to be afraid of going ahead, that his jib-boom would probably lie over the wall, and he could slack up his head-gear. (P. 54, int. 23.)

The attempt is made to show, that Colman gave directions to the cap-

tain at some time when the "Daybreak" was in her berth, that his berth was where the "Daybreak" was. (Colman, pp. 57, 58, int. 73–76.)

On cross-examination, Colman admits that he testified in the District Court that he had no conversation with the master, and that his only directions were given to the mate. (P. 62, cross-int. 33.)

The only witness to corroborate Colman, is Torrey, the mate of the "Haskell," whose deposition was taken in April, 1868. He follows so closely Colman's language that the inference is irresistible that he had been told what Colman had testified, or had read Colman's deposition. (Torrey, p. 88, int. 11.)

He swears that he had not spoken of the conversation from the time it took place until the taking of his deposition, except to one person, yet he is able to give almost the exact language of Colman's deposition. (P. 90, cross-ints. 31, 33.)

This witness is proved conclusively to be unworthy of belief. He says now that at the time of the conversation he was standing within three or four feet of the mate and Colman; he gives their conversation in detail, swears that Colman used the words "after combings" in speaking of the main-hatch, and that Colman put his hand on the post to which he was to haul the after combings of his hatch. (P. 88, int. 12; pp. 90, 91, cross-ints. 37–39.)

In the District Court, he said he was present at the conversation, "*not being very near, I couldn't understand exactly,* he said to come square to stage that was there, and he put his hand on a post, *two posts,* I think the stage lay between the two." .... On cross-examination, he testified in the District Court, "*I was standing on the wharf, fifteen or twenty feet from them, doing nothing, ... think* he told him to bring the after part of his hatch." (Judge Lowell, p. 262, int. 10; p. 263, cross-int. 1; p. 264, int. 12)

What the witness, a few months after the conversation was held, was only willing to testify he thought was said, he seventeen months afterwards was willing to swear was said, what he then could not understand exactly being fifteen or twenty feet off, he can now swear to, as he says he was only three feet off.

Bryant denies that any one was present at the conversation he had with Colman on the morning of Saturday, and denies Colman's statements. (P. 207, ints. 6–9.)

The question, then, as to what directions Colman gave in regard to where the vessel was to be hauled, depends upon the testimony of Randall, Bryant, and Curren on the one side, and on that of Colman and Torrey on the other. Torrey being shown to be unworthy of belief, the preponderance of evidence is so strongly in favor of the libellants, that their statement must be taken as the correct one.

How is Colman, the foreman, able to recollect conversations, when his memory is so very indistinct on other points? He cannot remember whether the "Smith" was unloading when the "Bowdoin" came in (p. 54, int. 22); nor whether Oakman was in the boat with him and Mulliken (p. 63, cross-int. 38); nor whether he had a conversation with Frazar in the boat (p. 63, cross-int. 47); nor the position of the spar fender on Monday morning (p. 64, int. 115); nor whether it was fastened to the west wharf (p. 64, cross-int. 51). He now testifies that he also gave the master directions, when, he admits that, in the District Court, he testified that he did not. (See *supra*.)

The attempt is then made to show, that Oakman gave other directions to the master and mate.

As to the master, Oakman testifies that he told him, when he came, to take the same berth in which the "S. P. Smith" was then discharging. (P. 122, int. 6.)

Oakman (p. 126, ints. 12, 13) testifies to directions given to the mate on Friday afternoon, to go and see where the "Daybreak" lay, because he wanted her to be there in order to discharge more readily with the rigging, etc.

The only witness who corroborates Oakman in any way is Orcutt, Oakman's clerk. All he says, is, "Mr. Oakman told him to haul into the berth then occupied by the "Daybreak," and he went out with that understanding." (Orcutt, p. 101, int. 9.)

He therefore merely corroborates the general directions given by Oakman, as to the taking of the "Daybreak's" berth. Of the specific directions which Oakman says he gave, he testifies not a word.

That this was all that was said, is most natural. The man, whoever he was, did not come in according to either of them to find out about the exact locality of his place of discharging, but to complain that another vessel had got his place, and Oakman answers, "No, you are to have the 'Daybreak's' berth."

Bryant denies that he had any such conversation with Oakman. (P. 209, ints. 37, 38.)

Colman is recalled to show that Bryant went to the office. (P. 245, int. 6.) But, on cross-examination, it appears that he did not see the mate go to the office. (P. 247, cross int. 17.)

Oakman cannot remember what he testified on this point in the District Court. (P. 253–254, cross-ints. 16–21.)

The appellants have therefore failed to prove that Oakman gave the directions he says he did.

If Oakman gave the general directions, they would be controlled by the specific directions given by the foreman.

Second. If the appellants desired the "Bowdoin" to lie so far ahead that it was necessary for her to take up her martingale, they should have notified the master of this, and that he would be in danger if he did not do it.

Colman says, that in the conversation he held with the mate on Saturday afternoon, he told him "not to be afraid of going ahead; his jibboom would probably lie over the wall; he could slack up his head gear." (P. 54, int. 23.)

We deny that any such interview took place on Saturday afternoon. (See *ante*, p. 20).

If such an interview did take place, Torrey says nothing about any such directions. (P. 88, int. 11.)

Bryant denies that Colman gave any such directions. (P. 207, int. 9.)

That it is not customary for vessels to take up their martingales without specific orders, and that it is customary for wharfingers to notify masters when this is necessary, is proved by the evidence in the case.

Curtis, p. 175, int. 7; p. 178, int. 11.
Crocker, p. 179, int. 14; p. 181, int. 18.
Blaney, p. 83, int. 13; p. 184, cross-ints. 9, 10.
Davison, p. 185, int. 13; pp. 188, 189, cross-ints. 15, ints. 25, 26.
Ricker, p. 190, int. 10.
Steelman, p. 201, int. 8; p. 202, cross-int. 12; p. 203, int. 13.
Randall, p. 216, int. 20.
Paine, p. 233, int. 22.
Low (appellants' witness), p. 247, cross-int. 6; p. 250, cross-int. 8.

The evidence of the appellants does not in any way contradict this. They put on Gardner, Low, Fletcher and Nelson.

None of these witnesses is asked a hypothetical question which embraces the elements of this case.

Gardner is asked, who is to see that the martingale is taken up when circumstances require it, and says: "The captain or the mate, generally has been the usage in my experience; sometimes the wharfinger, if he sees that is required, if he is there." (P. 248, int. 6)

Low, on cross-examination, says, at his wharf, if he wants the master to take up his martingale, he tells him to do it. (P. 250, cross-int. 6.)

On cross-examination, a question is put to him involving the precise elements of this case.

Cross-Int. 8. (*de bene.*) Suppose there was room enough for him to get in, without taking it up; should you expect him to take it up without special directions from you?

Ans. No, sir.

Fletcher is merely asked whether it is common or uncommon for vessels to come up with their martingales. (P. 256, int. 8.)

"*Cross-Int.* 9. (*de bene.*) Do you not at your wharves if you want a vessel to lie so far ahead that her bowsprit will be over the cap of the wall, tell the master to take up his martingale?"

"*Ans.* I have done that, sir; advised him to take it up." (P. 257)

Nelson is merely asked whether it is common or uncommon for vessels lying at wharves to come up with their martingales. (P. 259, int. 9.) And in answer to the tenth, says one-third of the vessels that come to his wharves take up their martingales.

It appears however that there are three berths at his wharves. Two where vessels never come up with their martingales, and one where they cannot lie to unload without taking them up, and that when vessels go to this berth, the masters sometimes take up their martingales of their own accord, and sometimes the witness tells them to do so. (P. 260, cross ints. 16–19.)

The appellants have also asked these witnesses, how long it takes to come up with the martingale, with a view, it is presumed, of showing that the custom proved by the libellants is unreasonable, because so short a time is required to come up with the martingale. The question has not been asked these witnesses, how long it takes to set up the martingale again; although this is an important element.

Davison (p. 189, int. 26) says "we never put a man to that inconvenience if we can help. There is not so much trouble in coming with the martingale, as in setting it up again afterwards."

Ricker says: "Well, I should say to turn it up, and put it back, and get all the rigging back, would be a day's work for two men." (P. 190, int. 13) Oakman, one of the appellants, says, "The work of slacking up, coming up is very little; it would take perhaps fifteen minutes. It is a good deal more work to set it up." (P. 125, int. 19.)

There seems to be no question, that it would have been necessary to take it up if the vessel had been hauled where she was the next day.

There is no question that it was taken up, and Bryant and Randall say, that after the vessel hauled ahead, the martingale would have been over the wall if it had not been taken up.

Bryant, p. 210, int. 42.
Randall, p. 217, int. 25.

It is obvious that, even if the martingale did not come over the wall, it would be necessary to take it up, if the vessel lay so far ahead that any of the stays that pass through the martingale would come over the wall.

There is no evidence that either the "Smith" or "Daybreak" took up their martingales.

Third. The directions given to the vessel were complied with.

Randall, p. 5, Int. 1. "I hauled my vessel into her berth, where I was ordered to haul her."

Randall, p. 10, Add. Int. 1. "I laid just as far ahead as I was ordered to lay to discharge."

Bryant, p. 11, Int. 6. "Whether or not the main hatch was placed abreast of the stage?" *Ans.* "It was, sir."

A slight attempt is made to show that the main hatch was not hauled abreast of this staging.

Manning puts the corner of the stage which was the furthest down the wharf, four to five feet from the upper combings of the schooner's

n ain hatch. (P. 93, int. 28.) He does not pretend to speak with accuracy, but uses such uncertain language as, "*I should say, as near as I can recollect*, four or five feet," etc.

Swan puts it at from eight to ten feet. (P. 81, int. 26.)

But in answer to cross-int. 50, p. 87, he says, by the main hatch he means the after hatch, and he can't remember whether the main hatch is fore or aft of the mainmast.

Manning is clearly mistaken when he says the main hatch did not come up to the stage.

Clapp, a witness for the appellants, who made measurements, says the end of the run is 57 feet 9 inches above the jog; that the run on top is about 6 feet wide. (P. 244, ints. 9, 10.)

Manning says the movable stage was 26 or 27 feet long, and 7 to 8 wide. (p. 93, int. 24.) On Saturday, before the "Daybreak" went out, this stage was hauled in, so as to bring the outer end furthest down the dock, with one corner over the run and the other on the run, and the upper end over the upper end of the run. The stage was in this position on Monday morning. (Manning, p. 93, int. 27.) On p. 96, in answer to cross-int. 14, he says the inner corner of the upper end projected over the upper end of the run, about two feet.

This would, bring the upper corner of the lower end which projected over the side of the run, from twenty-three to twenty-four feet from the upper end of the run, and from thirty-three to thirty-four feet from the jog.

Did the main hatch of the "Bowdoin" come to this point?

Randall says it is forty-five feet from the bow to the fore part of his main-hatch, and that his main-hatch is nine feet long (p. 217, ints. 28, 29). He says the measurements were from the knightheads. (P. 223, cross-int. 84.)

Clapp (p. 243, int. 3) gives various measurements, which show that there are one hundred and ten feet six inches from the taffrail to the knightheads.

Taking the two measurements, the fore part of the main-hatch is forty-five feet from the knightheads, and sixty-five feet six inches from the taffrail, and the after part of the main-hatch is fifty-four feet from the knightheads and fifty six feet six inches from the taffrail.

If the vessel lay with her stern twenty-five feet below the jog, the

after part of the main-hatch would be thirty-one feet six inches above the jog.

This would bring the upper corner of the lower end of the stage, within two or three feet of the after combings of the main-hatch, and as the lower corner of the lower end would be still further down the run, it is clear that the hatch was not only abreast of the stage, but even a little further up than was required.

It seems to be admitted, that the stage lay with its outer end down the wharf.

Colman, p. 63, ints. 42, 43.
Swan, p. 80, int. 22.

Fourth. As to the statements alleged to be made by the master and mate, why they did not haul the vessel further ahead.

This accident took place in October, 1866; and, in April, 1868, some of the employees of the appellants undertake to give the conversations which they say they had with the master and mate.

Colman's memory, we have seen, is not to be depended upon. See *ante*, p. 22.

In regard to the next witness, Keating, it is only necessary to refer to the difference in his testimony in the District Court and here. See *post* p. 44. His memory is not good enough to enable him to say whether he testified on this point in the District Court. (P. 73, cross-int. 50.)

The absurdity of Burnett's story, that the mate told him "the captain came down on Sunday and ordered him to haul astern," is apparent. The captain was aboard all the time, and there is not a particle of evidence that the vessel was hauled astern after she was hauled in.

Burnett's memory is very poor. He fixes the position of the movable stage on the top of the run as angling directly the other way from that in which the other witnesses put it. (P. 77, cross-int. 8.)

Swan and Bray go aboard together on Monday morning. Compare their statements. Swan says he made one remark, and Bray says Swan made another. Swan says the captain said nothing; Bray relates what he said. Swan, p. 80, int. 16; Bray, p. 153, int. 14; p. 154, cross-int. 13.

Swan can remember his conversations, but cannot remember the length and width of the movable stage. (P. 84, cross-int. 9.)

He tells one story in the District Court, and one here. (P. 83, cross-nt. 2; p. 84, cross-int. 7; p. 262, ints. 7, 8.)

P. 84, cross-int. 19, he thinks it would take a longer stage below the jog than above, though the evidence is, that the run is no further off below the jog than above. See Colman, p. 60, cross-int. 3; Oakman, p. 130, cross-int. 11, 12.

He cannot tell whether the main-hatch in the "Bowdoin" is fore or aft of the mainmast. (P. 87, cross-int. 50.

As to Torrey's statement of what the mate said when he hauled alongside the wharf, if Barbour is to be believed, Torrey did not stay on the "Bowdoin" till she got to the wharf. (P. 242, int. 12.)

The conflict in Torrey's evidence in the District Court and here, shows he is utterly unworthy of credit. See *ante* p. 21.

Oakman, on direct examination, says master did n't claim he had put her where mate ordered her; (p. 124, int. 16) but, on cross-examination, he says: "I would n't say that the captain did n't say so." (P. 131, cross-int. 33.)

So far as the above evidence tends to show admissions made by the mate, it is inadmissible.

The Enterprise, 2 Curtis, C. C. 320.
The Midlothian, 5 Eng. L. & Eq. 556.
The Potomac, 8 Wall. 590.

So far as it tends to contradict the mate, it is inadmissible, no proper foundation for it having been laid.

Conrad *v.* Griffey, 16 How. 38.

The subsequent examination of the mate on the question of the conversations, does not vary this rule, the examination having been *de bene*.

Both the mate and the master deny having made the remarks imputed to them.

Randall, p. 215, ints. 6, 7; p. 216. ints. 8–12.
Bryant, p. 207, int. 10; p. 208, int. 20; p. 209, ints. 29–31, 35, 37, 39.

Declarations and admissions have little weight in opposition to the deliberate testimony of the persons alleged to have made them, as to the facts.

The Steamboat New Jersey, Olcott, Adm. 415.
The Empire State, 1 Bened. Adm. 57, 64.

V. THE APPELLANTS WERE GUILTY OF NEGLIGENCE IN NOT WARNING THE MASTER THAT THE COAL WAS IN THE DOCK.

There is no pretence that there was any direct warning given by the appellants or by their agents; and Colman, the foreman, admitted that no warning was given.

Swett, p. 36, int. 18.
Elliott, p. 39, int. 10.
Frazar, p. 45, int. 20.

The appellants, however, set up in their answer, that they are informed and believe that the "Bowdoin" was not in good condition when she hauled into the dock. They also deny that the damage was done by the coal.

1. *The vessel was in good condition at the time of the injury.*

The defendants have introduced no evidence to sustain their plea that the vessel was not in good condition, and the proof on the part of the libellants is full to the point that the "Bowdoin" was an A 1 vessel, about four months old, built of oak, in the best manner, and of the best materials, — rather extra built.

Randall, p. 6, ints. 8, 10.
Paine, p. 24, int. 19.
Pierce, p. 32, int. 12.
Swett, p. 36, int. 23.
Frazar, p. 45, int. 19.

2. *The damage was done by the coal.*

There is no question that the coal was in the dock, that it had been there a week before the accident, and that the appellants and their servants knew it was there. (Oakman, p. 126, int. 28; Colman, pp. 61, 62, cross-ints. 15–27.)

We contend that the dock, with the coal in it, was not a proper place for a vessel to lie.

Paine, p. 24, int. 17.
Pierce, p. 32, int. 11.
Swett, p. 36, int. 22.

Frazar, p. 45, int. 18.
Elliott, p. 39, int. 9.

How far did the coal extend, and did it touch the "Bowdoin" before or after she hauled ahead?

Randall (p. 5, int 4) says, on Monday morning, "I immediately turned out, and went on deck, and found the condition the vessel was in. I found that she was badly strained, and I went then to see what the occasion was, and I found there was a pile of coal amidships, by the main rigging, that caused her to heel off."

Swett, p. 35, int. 5, "I found a pile of coal, the first time I was there, under her bilge, somewhere about her main chains, just abaft her main chains, on the starboard side. . . . . As nigh as we could judge by the feeling of the coal, the coal continued to her keel."

Tower, p. 204, int. 9, "She appeared to rest on a pile of coal amidships; it was a little forward of the mainmast where the worst strain appeared to be."

Pierce, p. 30, int 2, "We found the vessel laying at Oakman & Eldridge's wharf, known as Caswell's wharf. The vessel lay with her starboard side next to the wharf. We examined her, and found her resting on a bed of coal."

See also Paine, p. 21, int. 3.

On the 30th of October, the day after the accident, after the vessel was hauled ahead, Paine and Pierce got down on the pile of coal between the vessel and the wharf, and found that the vessel, although hauled ahead, was still resting on the coal.

Paine testifies that he took an oar and couldn't press it between the coal and the vessel.

Paine, p. 22, int. 3; p. 23, int. 10; p. 27, cross-int. 31.

Pierce says: "I could feel the coal up against the vessel's bottom: it might have been five or six feet from the keel, I should think."

Pierce, p. 31, int. 2.

On the 2d of November, the "Bowdoin" had been hauled out of this berth, and Paine, Elliott, Frazar and Swett took a boat and sounded in the keel-track, and found coal in the keel-track opposite the pile of coal, rising up about six inches.

Paine, p. 22 int. 3.
Swett, p. 36, ints. 12–17.
Elliott, p. 39, ints. 6, 7.
Frazar, p. 45, ints. 12, 13.

Davis, who afterwards went in a boat and sounded in the keel-track, found coal there. (P. 42, int. 8.)

The appellants and their employees could not, of course, find any coal in the keel-track. Colman admits that the coal extended twenty-seven feet from the jog, and that the nearest part to it was twelve feet.

Colman, p. 56, ints. 48, 49.

Colman went in a boat a few days after the "Bowdoin" went out, and could not find coal in the keel-track.

Colman, p. 58, ints. 80–85.

He went with Mulliken, and used the oar to propel the boat while Mulliken used the pole (int. 87). Knows by hearsay and measurement, of the pole, that Mulliken did not find coal (int. 88). Admits that the coal came very near the keel-track (int. 92). Only *thinks* he looked in the keel-track opposite the pile of coal (p. 59, int. 98). Colman sculled the boat (p. 62, cross-int. 34), and admits that there were three feet and a half of water over coal near the keel-track, and four feet of water in the keel-track. (P. 59, ints. 96, 97.)

Mulliken was in the boat with him; did not find coal (p. 65, int. 9); found only soft mud in the keel track with his pole (int. 10.) He says: "At the time I examined the keel-track, I did not have the pile of coal in my mind at all, to the best of my recollection." (Int. 17, p. 66.) Stuck the pole into the pile of coal and found the mud soft. (Int. 19.) Says, on cross-examination, that he didn't push his pole into soft mud in the keel-track, but that this was on the side, and that his pole was pushed through the coal three or four feet from the keel-track; and that his object was not to ascertain whether the coal was pressed, but merely to propel the boat; that Oakman and Colman were in the boat with him; and admits that he did not measure where the bilge had been.

Mulliken, p. 67, 68, cross-ints. 12–28.

As where the bilge had been, was the important place, the worthlessness of his, Colman's and Oakman's, evidence needs no comment.

Mulliken was not near the stern of the vessel the first day. (P. 6[illegible], cross-int. 1.)

Keating admits the coal came to within *twelve to twenty inches of the keel-track* (p. 70, int. 20). Ascertained there was no coal in the keel-track by looking at it (p. 70, ints. 21, 22).

This witness is shown to be utterly unworthy of belief. (See *post* p. 44.)

Burnett, the stevedore, went in his boat and found no coal in the keel-track. (P. 75, int. 19.)

Burnett says he went in his boat, of three feet beam, and propelled it nearly all the way up the keel-track by pushing with an oar over the side. He does not testitify to a single sounding in the keel-track. The only thing he can testify to in regard to the appearance of the coal, as showing that the vessel had not rested on it, is seeing the tracks of the feet, which had been made close to the wall. On Monday morning, when he says he could see that the vessel did not rest on the coal, he admits that the coal was under water. (Burnett, pp. 75, 76, ints. 19–29; p. 68, cross-int. 18–29.)

Swan thinks if the vessel had rested on coal, it would have pushed it into the mud (P. 82, int. 37.) Some of that coal, however, is not yet all pushed into the mud, though vessels and ice have lain on it. (See Oakman, p. 133, cross-ints. 49–52.) Swan also says that there was no coal in the keel-track. (Int. 40.) Examined with his hand and arm. (Int. 42.) He went in boat with the fireman and the civil engineer. (P. 85, cross-int. 24.) The place where he felt, turns out, on cross-examination, to be below the jog. (Cross-ints. 27–30.) Admits that he did not go above the jog. (Cross int. 35.)

Manning does not think the vessel lay on coal, because the coal was n't jammed. (P. 94, int. 36.) He examined the coal at low tide, and found two and a half feet of water in the keel-track opposite the coal. (P. 94, int. 40.) Doesn't think the coal came nearer than within a foot of the keel-track. (Int. 43.) When asked whether there was any coal in the keel-track, he merely says, "I did n't see any in it." (Int. 44.) On cross-examination, all he knows about the mud being soft under the coal is, that he stuck a pole into it, six or seven feet from the wall. (P. 97, ross-ints. 28–31.)

Orcutt did not go on to the east wharf until after the "Bowdoin" had been hauled ahead. (P. 101, int. 13.) He sticks his pole in, six or seven feet from the wharf, and finds the mud soft, and hence concludes that the vessel did not rest on the coal. (Ints. 31, 32, p. 103.) He admits that some of the coal ran down to the keel-track, though he thinks none of consequence did (p. 103, int. 29); but, as he admits that he made no particular examination of the keel-track (p. 103, int. 35), his evidence of how much went in is of little value.

White, at one time the proprietor of the adjoining dock, says when he saw the "Bowdoin," she was not touching the coal; but he admits that some of the coal was then under water. (P. 110, cross-int. 13.) He bases his opinion that the vessel had never touched the coal, on the ground that the mud was so soft that if she had meddled with it, it would have gone out of sight. (P. 107, int. 16.) The premises are shown to be false by the fact that some of the coal still remains, though it has been pressed down by vessels and by the ice.

Oakman admits the coal went very nearly to the keel-track. (P. 128, int. 50.) Oakman also admits that when he stood at the head of the dock, he was not looking particularly to see whether the coal touched the vessel. (P. 132, cross-int. 41.)

Buchanan, the engineer, about the 19th or 20th of November, long after the vessel had gone out, did not notice any coal in the keel-track, and says he didn't find any by running an oar in the mud in the keel-track. (P. 141, int. 43 *et seq.*)

This witness cannot swear that he did thrust his oar in but once, and cannot swear that it was in the keel-track that he thrust it then. He thinks he might have thrust the oar a foot or a foot and a half into the mud in the keel-track. (See p. 147, cross-ints. 49–57.)

All the evidence, however, is that whatever the mud was at the side of the keel-track, it was hard in it.

And the evidence of those who were with Buchanan shows that when he was in the boat, in November, 1866, he did not go above the jog. (See Swan, p. 85, cross-int. 24, p. 86, cross int. 35.)

The evidence of this witness, even if it were positive, is immaterial, for a month had elapsed after the injury was done, and there was abundance of opportunity to remove the coal from the keel track..

The witness also is untrustworthy, since he deliberately changed a

plan which he had testified in the District Court was correct, and sought to impose the changed plan on the Court, covered with the results of subsequent soundings, as a plan made from surveys in November, 1866.

See *vost*, p. 48.

On the question, whether the coal damaged the vessel, and whether the dock with the coal in it was a fit and proper place for a vessel, the Court has, on the one side in favor of the damage being so caused, the opinions of five disinterested witnesses.

John A. Paine (p. 23, int. 16; p. 232, int. 9), a port-warden of Boston for ten years, a mariner for thirty-six years, and twenty years a master. (P. 21, int. 1.)

Jacob G. Pierce (p. 32, int. 10), a mariner for forty-one years, a master thirty-four years. (P. 30, int. 1.)

Alexander B. Swett (p. 36, int. 21), a shipwright for twenty-six years. (P. 34, int. 1.)

Ebenezer Davis (p. 42, int. 9), a marine inspector for Boston Board of Underwriters twenty-one years, and before that a mariner for thirty years and a master for fifteen years. (P. 11, int. 1.)

George Frazar (p. 41, int. 17), marine surveyor for American Lloyds, and a ship builder for over thirty years. (P. 44, int. 1.)

David Elliott (p. 39, int. 8), a mariner for thirty-seven years and a master for twenty-two years. (P. 38, int. 1.)

On the re-examination of Davis, the appellants asked him the question, whether at the time he saw the vessel in the dry dock he noticed any break or abrasion in her outer planking on her starboard side, and he said he saw none. (P. 150, int. 7.) On cross-examination, he admits that he did not look particularly to see whether the planks were abraded or not. (P. 152, int. 22.)

Swett, who repaired the vessel, swears that there was coal jammed

up into the planking and into the seams of the vessel. (P. 240, int. 18.) He was cross-examined at much length as to the person to whom he had before told this, and no one was called to contradict him, either as to the conversations or as to the facts to which he testified.

If the vessel rested on the coal in the manner in which the witnesses for the libellants swear she did, it would be perfectly natural that there should be coal in the planks and seams of the vessel.

To prove that the coal did not injure the vessel, the appellants rely upon the opinions of Oakman and his employees, assisted by one or two of his friends. With a keel-track seventeen feet from the wharf, we have these employees coming here and swearing that they found no coal in the keel-track, when it appears that some of them never went above the jog, and the knowledge of others is based on the fact that they diligently thrust poles into the coal six or seven feet from the wall, and ten or eleven feet from the keel-track.

The language of Mr. Justice Story in the case of The Schooner Reeside, 2 Sumner, 572, in regard to the testimony of employees, is applicable here.

"But though they are competent witnesses, it is impossible to wink out of sight, that they stand in a position somewhat peculiar, and under influences not wholly without a bearing upon the cause. They come to purge themselves and their employer from the imputation of gross neglect in the discharge of duty."

The appellants will probably rely on the opinion of Davis, one of the libellants' witnesses, that if the vessel were in a certain position, the coal could not, in his opinion, have damaged her.

The interrogatory and answer are as follows (p. 150, int. 6.) "Suppose it were proved to you that the 'Bowdoin,' when loaded, was placed with her bow close to the wharf, and her stern off from five to ten feet, should you or not then think that the pile of coal had caused the damage?"

Ans. "I should not think so."

This hypothetical question is not based upon the facts proved in the case.

Probably all the other witnesses for the libellants would have made the same reply. Davis, it will be remembered, did not see the vessel until she had been hauled ahead.

3. *The place of the injury shows conclusively that the damage was caused by the coal, and not by the descent near the jog.*

The twist was from the main hatch, the deck drawn from the combings of the main hatch, the coal was then abreast of the main rigging. Knees were broken near the main-hatch. The flat of the floor on the starboard side crowned up about four inches out of the line, supposed where she rested on the coal. (Paine, p. 21, int. 3.) See also Pierce, p. 31, end of ans. to int. 2, and int. 5.

Pierce says (p. 30, int. 2): "The main hatch combings seam was open I should judge half an inch; her butts were generally strained along in the direction where the bed of coal was; the seam next to the mast partners was a good deal opened, the head of the mainmast looking from the head of the wharf, was out of plumb about two feet."

Int. 3. "Whether or not said vessel was hogged?"

Ans. "Yes, sir, she was hogged; she was raised up where the pile of coal was."

Pierce, p. 31.
Paine, p. 22, int. 4.

Elliot says (p. 39, int. 2): "We went in her hold and found six knees broken and split on both sides; and the floor on the starboard side along abreast of the mainmast rounded up."

See also Frazar, p. 44, int. 3.
Swett, p. 34, int. 2.
Davis, p. 41, int. 3.
Tower, p. 204, int. 9.

Clapp testifies that from the centre of the taffrail to the centre of the mainmast was forty-seven feet three inches; that the distance from the taffrail to the knightheads is one hundred and ten feet, six inches (p. 243, int. 3), and that the distance from the fore part of the main hatch to the knightheads, is forty-eight feet, six inches. (P. 244, int. 7.)

Randall testifies that the main hatch is nine feet long. (P. 217, int. 28.)

From these measurements it follows, that the centre of the mainmast was about twenty-two feet above the jog, and the after combing of the main hatch was thirty feet above, if the vessel lay with her stern twenty-five feet below the jog.

The damage would naturally be near the point where the damaging cause was. If it were a descent at the jog, the hogging would certainly be near there, but we find it much forward of this point, and just where the coal was.

The descent, however, is shown to be below the jog, so that the place of damage is still further removed from the alleged cause. See *post*, p. 53.

4. *Amount of coal.*

The libellants' witnesses put the amount of coal at from fifteen to twenty-five tons.

Paine, p. 23, int. 6.
Pierce, p. 32, int. 6.
Swett, p. 35, int. 11.
Elliott, p. 40, int. 12.
Frazar, p. 45, int. 9.

The appellants' witnesses put it, some from two to three (Manning, p. 94, int. 34), others from two to five, three to five, and White from five to six. (P. 107, int. 14.)

On the 29th of April, 1868, eighteen months after the accident, and when one would suppose, if the mud were as soft as the appellants' witnesses testify, that the coal would have all disappeared, Buchanan finds over four tons.

The length of the pile of coal then was twenty-seven feet; the width, from seven to ten feet. (P. 142, int. 46.) The depth he gets at by digging four holes — one a little over two feet from the wall, one between three and four, and two about five. These holes he dug — two, four inches deep; one, a foot deep; one, a foot and a half. (PP. 146, 147, cross-ints. 45–47.)

Now, the keel-track is seventeen feet from the outer edge of the cap-sill of the wharf (Buchanan, p. 138, int. 14), and the evidence of the appellants admits that the coal originally went very near this keel-track. Hence it is obvious, that digging shallow holes five feet from the wall, and allowing but eight and a half feet for the width and ten inches for the depth (p. 147, cross-int. 48), is no way to get at the amount which was there in October, 1866. If this measurement of part of the

area shows four or five tons, the estimate of the libellants' witnesses cannot be far from right.

The exact amount of the coal is a matter of no importance; for no witness dares to say that a vessel can rest on even four tons of coal with impunity.

5. *Evidence that other vessels were not injured by the coal is immaterial.*

The appellants will probably claim that, because no injury was done to the "S. P. Smith," and to the "Daybreak," and to other vessels that have been in that berth, by the coal, it follows that the coal could not have injured the "Bowdoin."

To this position, the rule of law, that evidence that other persons or things have not suffered from an alleged defect, is not admissible, is a sufficient answer.

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Apart from the rule of law, the evidence offered is immaterial. To entitle it to any weight, the appellants would have to show that the coal was in the same position at the time the other vessels were in that berth as it was when the "Bowdoin" rested upon it, and also that the other vessels were of the same length, breadth and flatness, and were the same distance from the wharf as the "Bowdoin" was, and were as heavily loaded at the time they rested upon it. No attempt is made to prove any of these propositions.

The "S. P. Smith" was in the berth when the coal went overboard. (Orcutt, p. 102, int. 22.)

The coal had been taken out of the "Smith" and placed on the wharf. Part of her cargo had then been discharged, and there is no evidence that she grounded before she went out. The "Daybreak" went in at high water, — on what day does not appear, — and there is no evidence that she grounded on the coal before discharging part, at least, of her cargo. (Orcutt, p. 104, cross-ints. 9–11.) Nor is there any evidence as to the distance the "Daybreak" lay from the wharf, or of her flatness. The "Daybreak" and "Smith" were shorter than the "Bowdoin." (Colman, p. 56, int. 56.) As to the vessels that have lain there since the "Bowdoin," we know nothing about them, except that one of

them was so short that her stern only came to the centre of the coal. (Orcutt, p. 102, ints. 23, 24; p. 105, cross-ints. 16, 17.)

The same answer may be made to the argument of the appellants, that the coal would not have damaged the "Bowdoin" if she had been hauled as far ahead on Sunday as she was on Monday, assuming that no damage is shown to have happened to her after she was hauled ahead.

When the "Bowdoin" grounded, on Monday night, she had the coal taken out aft and wheeled forward, and about fifty tons less on board than she had on Sunday. (Oakman, p. 126, int. 30; p. 254, cross-int. 23.)

She had the big spar fender between her and the wharf, so that she was farther out than she had been on Sunday. (Oakman, p. 125, int. 21.) This fender was twenty inches thick. (Swan, p. 87, cross-int. 46.)

The vessel, on Monday, was hogged and strained in the middle, and bringing the after part on to the coal tended to cause the hogged part rather to come into position than to increase the injury.

6. *If there was coal on the wharf, this would not be notice to the master that there was coal in the dock.*

It may be urged that the master or the mate had reason to suspect that there was coal in the dock, from the appearance of the wharf.

The coal ran into the dock a week before the "Bowdoin" arrived, the Monday night before. (Oakman, p. 126, int. 28.)

Some attempt is also made to show that, as the master or mate were about the wharves during part of the week preceding rhe accident, the coal might possibly have been seen by them.

It appears, however, that there are two wharves, the east and west wharves, with a dock between them, that there is a passageway on the west wharf, in the centre of the wharf, and one on the east wharf; that there is a gateway to each wharf; that the counting room is on the west wharf; hat the Fitchburg Railroad runs in the rear of the counting-room, and between the road and the dock are coal sheds; that on the

easterly wharf the dock is hidden from the road by the bulkhead; that on the west wharf is a building, covering the wharf from one side to the other, with the road-way running under it. That from this building a run extends on posts almost to the counting-room; that between the upper berth on the west wharf and the run, coal is frequently piled; that the engine was near the head of the dock, on the west side, and the appellant, Oakman, cannot remember whether there was coal piled between the engine and the store-house. (Oakman, p. 129, cross-ints. 1–7; p. 130, cross-ints. 8–19; p. 134, cross-ints. 62–65; p. 135, cross-ints. 66–69.) There is no dispute that the "Bowdoin" lay at the end of the west wharf until Saturday. The officers would have no occasion to go on to the east wharf at all, either in going to the counting-room or to the street; and the view of the dock must have been very much obstructed by the coal, and buildings and runs on the wharf.

Even if the view had been unobstructed, there would have been no chance to see the coal in the dock; for it was covered at high water, and there would have been no chance to see it at low water as the "Smith" and "Daybreak" were there. The top of the pile in the dock was from seven to twelve feet below the capsill.

Paine, p. 27, re-int. 23.
Swett, p. 35, int. 8.
Elliott, p. 40, int. 11.
Frazar, p. 45, int. 11.

Colman, the foreman of the appellants, says that the day after the break, the coal in the bin was walled up, and the coal which had run out and which remained on the wharf was cleared away in about a day or two after the accident.

Colman, p. 62, cross-ints. 22–27.

Orcutt, the clerk of the appellants, on direct examination (p. 103, int. 34), is asked, "what were the appearances on the wharf where this coal had run down?" This question is clearly objectionable, as it is not limited to any time. He answers, "The only appearance was, coal from the edge of the bin scattered to the edge of the wharf." On cross-examination, he is not positive when it was cleared away. (P. 105, cross-int. 24.)

Swett (p, 35, int. 10) and Elliott (p. 40, int. 13) swear that they saw nothing on the wharf to indicate that there was coal in the dock; and Elliott swears the coal did not extend to the capsill of the wharf. (P. 41, cross-int. 6.)

It was of course evident to the surveyors, when they saw the coal in the dock, whence it had come.

The appellants have failed to prove that there was anything in the appearance of the wharf to indicate that there was coal in the dock.

Even if there was some coal lying between the bin and the capsill, there is no evidence that this is so unusual an occurrence on a coal wharf that a master of ordinary prudence would know thereby that there was coal in the dock.

And, if the appearances indicated that coal had, at some time or other, run into the dock, would they also indicate that the owner of the dock was so negligent that he had not taken the trouble to remove it?

Can a wharf owner excuse his own neglect in not giving warning, by showing the presence of scattered coal between the bin and capsill?

See Whitaker *v.* West Boylston, 97 Mass. 273.

VI. THE DAMAGE WAS NOT CAUSED BY THE DESCENT NEAR THE JOG.

The appellees consider that they have conclusively proved that the injury was caused by the coal. It may be necessary, however, to examine the theory of the appellants.

From the seventh article of their answer, it appears that the appellants impute the cause of the damage to the vessel not being hauled ahead far enough, and to her lying across the bank between the two berths at the easterly wharf.

Assuming that the injury was so caused, it is presumed that they will contend that the officers of the vessel were warned by Haskell, by Keating, and by the jog in the wharf.

1. *As to Haskell's warning.*

Haskell testifies (p. 49–51), that he told the master of the "Bowdoin" that he must go up the dock as far as he could, for if he didn't, the vessel would lie across the bank between the upper and lower berth at the easterly wharf.

He also testifies, that at the time of the conversation, Captain Randall was about twenty feet off, and Captain Barbour about four feet off. (P. 51, cross-int. 27.)

It is submitted, that the appellants have failed to prove that the warning was given.

The appellants' witnesses, Torrey and Barbour, were on the vessel at the same time, and Barbour quite near Haskell.

Torrey is not asked a question about it, and Barbour only remembers that the master of the "Bowdoin" and Captain Haskell had some conversation. He does not recollect what they said.

Barbour, p. 242, ints. 14, 15.

If there had been a warning, it would seem to be hardly possible for him not to remember it, the vessel being injured so soon afterwards.

Captain Randall denies that he had any such conversation with Haskell.

Randall, pp. 19, 20, 21.

Bryant (p. 208, ints. 13-17) says, the men who got on board from the

schooner were with him on the forecastle deck, helping to heave by the schooner's stern, and that they had no conversation with Captain Randall, that he saw.

Both Bryant and Randall say that the men who got on board their vessel from the schooner only remained on board while they were hauling round the schooner's stern, and in this they are confirmed by Haskell.

Bryant, p. 208, int. 16.
Randall, p. 20, cross int. 15.
Haskell, p. 50, cross-int. 12.

Torrey, however, states that they remained on board until after the vessel got into the dock.

Torrey, p. 90, cross-int. 26–29.

Barbour thinks that Torrey got off from the schooner's quarter to the bow of the "Haskell."

Barbour, p. 242, int. 13.

If this conversation had been held, it follows not only that the master deliberately placed a new vessel in a position of danger, which seems incredible, but also that Haskell, when he saw the vessel had not hauled so far ahead as she ought to have done in order to escape the danger he had pointed out, allowed her to remain in that position.

Haskell, p. 50, cross-int. 17; p. 51, cross-int. 20–23.

There are, also, other contradictions, which show that Haskell is mistaken in supposing that he had this conversation.

Haskell says that he was, most of the time, on the forecastle deck, helping to heave.

Haskell, p. 50, cross-int. 15.

Torrey says that Haskell did not help to heave on the capstan.

Torrey, p. 90, cross-int. 30.

2. *As to the warning by Keating.*

Keating's story is, that on Sunday afternoon he told the mate, "If you let your vessel ground there you will certainly hurt her," and

"you'll find that if you let your vessel ground there, she will certainly get injured."

Keating, p. 69, int. 10.

Keating also testifies, that when he gave the warning he had in mind the descent near the jog. (P. 73, cross-int. 41. *et seq.*)

In the first place, no foundation was laid for this conversation with the mate, and this defect is not cured by the subsequent examination of the mate, his evidence being taken *de bene.*

In the next place, if true, to entitle the appellants to avail themselves of it, the communication should have been made to the master. The appellants seek to avoid this difficulty by asking Keating, Who appeared to be in command? and by endeavoring to show that the mate appeared to be.

There can be no question that the master was then on board, and in command.

Randall, p. 7, cross-int. 15.
Bryant, p. 209, int. 28.

The libellants may, however, well rest this part of their case on the utter falsity of this witness.

The deposition of this man was taken 9th April, 1868, more than seventeen months after the accident happened. In it, he swears positively to the language used. The hearing in this case, in the District Court, was in February, 1867, but four months after the accident. The witness then swore, on direct examination; "Don't recollect that I said anything about injury to his vessel; not sure whether I did or not." On re-examination, he says, "Think I told the mate his vessel would be hurted if it lay there;" and on re-cross, he said: "I said I couldn't positively swear." (Judge Lowell, 262.)

This witness is thus undertaking to swear to a conversation seventeen months after it took place, when, four months after it, he said he couldn't recollect that he said so, and couldn't swear positively that he did.

In the District Court, this witness swore that it was between four and five that he saw this vessel (Judge Lowell, p. 262), while now he swears it was between three and four. (Keating, p. 71, cross-int. 10.)

The animus of this witness is also shown by his endeavor to have his

remarks made in disparagement of his recollection erased. (P. 72, cross-int. 12)

Bryant swears that he had no such conversation with any one that afternoon.

Bryant, p. 208, ints. 20–27.

Keating testifies, that at the time of his conversation, he was standing on the cap of the wharf near the jog, and that he saw the mate go up the wharf into a rum shop on the other side of the street.

Keating, p. 69, int. 10; p. 71, cross-ints. 6, 9; p. 72, cross-int. 21.

Bryant swears, that he did not leave the vessel that afternoon till he went to get his supper, that he did not go into a rum shop, and that a person standing where Keating said he was, could not see any one going out of the gate into the street, being prevented by the coal sheds, and bulkhead.

Bryant, p. 208, ints. 25–27; p. 215, ints. 46, 47.

If this communication had been made, the vessel could not be moved if she were then aground, and Keating says he can't swear that she was then afloat. (P. 72, cross-int. 46.)

It may also be seriously questioned, whether the master of a vessel has not a right to rely upon the presumption that the dock is in safe condition, and is not bound to regard communications in regard to the bottom of the dock made by a person not connected in any way with the wharf.

3. *The effect of there being a jog in the wharf.*

The proposition of the appellants on this point must be, that the practice of having the bottom of a dock opposite a jog dredged in such a manner that a vessel cannot ground in safety if she lies partly above and partly below the jog, is so universal in the maritime world, that no master of ordinary prudence would think of placing his vessel with her stern by the jog in a wharf, and that the master of the "Bowdoin" was therefore guilty of negligence.

The appellants must also show, as a matter of fact, that if the mas-

ter was guilty of negligence in this respect, such negligence contributed to the accident, and that the injury was caused by the descent at or near the jog.

The evidence, however, fails entirely to support either proposition,

The appellants make no attempt to prove a practice to dredge the bottom of a dock in such a manner in any place but Boston; and if the owner of a wharf in Boston chooses, for his own purposes, to construct his docks in such a manner, he has no right to keep silent and act on the supposition that a person coming to his wharf from another port, is aware of his practice, and to call his ignorance negligence.

The evidence of the appellants also fails to show the uniformity of such a practice in Boston.

Woolley, the dredger, speaks more confidently on this point than any other witness, and if his evidence is to be believed, it is the general practice in Boston to dig the berths on different levels.

Woolley, p. 119, cross-ints. 27, 30.

This witness, however, swears in the most loose manner, and is utterly untrustworthy.

Thus (p. 119, cross-int. 30), he says the difference at Battery wharf is about seven feet, at Commercial, twelve, at T, four, at Rowe's, five.

The libellants have conclusively proved, that the docks at these wharves are dredged on an inclined plane, and that there is no difference of level above and below the jogs.

Crocker, p. 178, int. 5.
Curtis, p. 175, ints. 3, 4.
McKie, p. 172, int. 3.

Nichols, the wharfinger at Fisk's Wharf, called by the appellants, testifies that the bottom of his dock is on a gradual incline, although Woolley puts the descent at eleven feet. (Nichols, p. 169, cross-int. 4, p. 170, cross-int. 5)

As Woolley has been shown to have testified falsely in these instances, it may well be inferred that he has in the others.

Falsus in uno, falsus in omnibus.

Woolley (p. 120, cross-int. 32) is only willing to swear that the descent

in the appellants' dock is within ten feet of the jog, either above or below.

But, whatever may be the practice at other wharves, it is evident that Woolley does not consider that there was any such descent between the two berths at the wharf in question as would injure a vessel. He says (p. 117, cross-int. 9), there was a gradual incline between the head of the dock and the lower end of it, with a difference of about three feet and a half depth between the stern of a vessel in the upper berth, and the bow of a vessel in the lower berth. P. 120, int. 26, he is asked to explain this, and says: "My meaning is, that there were no abrupt places in there; there was a gradual decline, as I have said."

The witness then repeats the statement in answer to int. 28. He is then asked to draw the grade of the bottom of the dock, and does so, showing that the bottom is on a gradual incline, but that there is three and one-half feet difference in the depth between a point ten feet above and ten feet below the jog. After the witness has stated this several times, and has drawn a plan of the bottom of the dock, and changed the position of the points of the beginning and the end of the descent, the appellants' counsel puts the leading question, whether he remembers that any part of the descent came above the jog, and the witness then perceiving what was wanted, says: "It came below the jog, as I recollect it, most of it." (P. 121, ints. 29, 32.)

P. 121, cross-int. 35, he says a difference of three and a half feet in twenty he does not call abrupt.

The appellants then call Smith, who was a wharfinger for the appellants when the dock was dredged by Woolley. He says (p. 111, int. 13), that the descent commenced "perhaps ten feet, — from five to ten feet below the jog. Keating puts the descent from six to ten feet below the jog.

P. 73, cross-int. 44.

If, then, the descent did not begin until a point five or ten feet below the jog, and if it extended twenty feet, as Woolley says, it is obvious that as the vessel's stern did not lie more than twenty to twenty-five feet below the jog, she could not have been injured by the descent.

The appellants, to show the condition of the bottom of their dock, put on Buchanan, a surveyor.

This witness made soundings the 27th of November, 1866, and also soundings in the latter part of April, 1868.

At the trial in the District Court, he produced a plan, which he swore was a correct plan of the wharves and docks, as made by him in November, 1866. (P. 144, cross-ints. 15–20, 21.)

At the trial in the District Court, this plan showed the keel-tracks on each side of the dock in profile, with measurements every fifty feet, and also one measurement at one hundred and forty feet from the head of the dock. It also contained one cross section on the line EF, at a point one hundred and fifty feet from the head of the dock.

When he gave his deposition, in April, 1868, he produced, as a plan of the dock, Exhibit 2. This Exhibit, on its face, purports to have been made in November, 1866, but it is changed in essential particulars from the plan produced at the trial in the District Court, and does not correctly represent either the measurements made in 1866 or those made in 1868.

The witness was unwilling to allow the original, of which the plan used in the District Court was a copy, to be annexed, and we were obliged to have a copy of it made. This copy is marked "Exhibit 4," (Buchanan, p. 144, cross-ints. 17, 18.)

On page 148, int. 55, the witness says he has only altered the profile on the line AB, in Exhibit 2, at the upper end of the keel-track, at a point from seventeen to twenty-two feet from the head of the dock, but it is certain that he has altered the entire profile, so as to show a much more abrupt descent near the jog, than appeared in Exhibit 4.

By comparing the plan drawn on tracing paper with Exhibit 2, it will be found that they correspond exactly. Then place the traced plan on Exhibit 4, and the changes made by Buchanan will be obvious, and the untrustworthiness of the witness and the worthlessness of Exhibit 2, apparent.

Thus, in Exhibit 2, the profile of the easterly keel-track near the jog is much more abrupt than in Exhibit 4; and he has given no measurements which in any way account for this difference.

The profile of the westerly keel-track is entirely changed.

All the cross sections on Exhibit 2, except that on the line EF, have been added.

On p. 138, int. 15, the sounding at one hundred and twenty-five feet,

from the head of the dock, at the jog, should not be considered, for it appears from cross-int. 3, p. 142, that this sounding was not made in November, 1866.

The worthlessness of the new plan, as evidence of the condition of the dock in November, 1866, is shown by the fact that the measurement one hundred and thirty feet from the head of the dock, in November, 1866, was five feet and three-tenths, and in April, 1868, it was three feet and three-tenths, a difference of two feet. In November, 1866, the measurement at one hundred and forty feet from the head of the dock was six feet, and in April, 1868, four feet and three-tenths, a difference of nearly two feet.

Buchanan, p. 142, cross-int. 3; p. 141, ints. 38–40.

Another change has been made in the position of the jog in the two exhibits.

Buchanan, p. 146, cross-int. 43.

The profiles of the longitudinal sections and of the cross-sections are merely approximate, that is, the witness had made measurements at certain points, and between these points has made the profile to suit himself.

Buchanan, p. 146, cross-int. 38.

On p. 148, int. 54, on re-examination, the witness is asked in regard to a depression which appears in the cross sections P. Q., N. O, and L. M., in Exhibit 2.

The question is clearly leading, and is also immaterial as these cross sections were not made until April, 1868, and it is therefore objected to.

The witness says, after the counsel for the appellants had pointed out the depressions referred to in the question: "They were plotted from the soundings taken in cross sections, and also from the profile A. B."

The soundings, however, show no such depression.

L. M. is 125 feet from the head of the dock.

N. O. is 115 " " "

P. Q. is 105 " " "

No measurements were taken on the line A. B. at any of these points.

The measurements were at 100, 110, 120, 130 feet from the head of the dock. (P. 142, cross-int. 3.) They could not therefore have been plotted from the longitudinal section. Nor could they have been plotted from the soundings on the cross sections, made in 1868.

On p. 140, int. 30, it appears that the soundings on these cross sections were at 10 and 20 feet from the wall, while the depressions in L. M. and N. O. are 15 feet from the wall, and the elevations are 18 and 17 feet, respectively; and in P. Q. the depression is at 14 feet, and the elevation at 16 feet from the wall. There were therefore no measurements taken at any of these points, and the witness stands convicted of not only deliberately altering an exhibit used in the trial of this case in the District Court, but of representing profiles of the bottom of the dock which have no foundation save in his own imagination.

The evidence of the libellants proves, that a jog in a wharf is no indication to the mind of a master that his vessel cannot ground in safety unless it lies entirely above or entirely below the jog.

Crocker, wharfinger of Battery wharf, and a mariner for thirty-five years. P. 179, int. 13.

Blaney, for fifty-one years wharfinger of Central wharf. P. 182, int. 10.

Davison, twenty years a master, and for the last twenty-three years wharfinger of Lewis wharf. P. 185, int. 12.

Ricker, master, in the coasting trade twenty-three years. P. 189, ints. 5, 6.

Snow, master, in coasting trade thirty-seven years. P. 193, int. 5; p. 195, int. 9.

Reed, master, in coasting trade forty-seven years. P. 196, ints. 5, 9.

Hodgdon, master, in coasting trade thirty-five years. P. 198, ints. 3, 4.

Plummer, master, in coasting trade thirty years. P. 199, int. 6.

Steelman, master, in coasting trade nineteen years. P. 201, int. 6.

Elliott, master twenty-two years and mariner thirty-seven. P. 229, int. 3.

Paine, master for twenty-one years and port-warden of Boston for ten years. P. 233, int. 21.

Randall, p. 216, int. 15.

If men, with the experience these men have had, would not know that a jog in a wharf indicated an abrupt descent in the bottom of the dock, it is submitted that such knowledge could not have been expected of Captain Randall, and that a jog does not indicate any such thing as is claimed for it; and that if there is an abrupt descent on the bottom sufficient to injure a vessel, the presence of a jog does not exonerate the owner of the wharf from the responsibility of giving direct notice of the danger.

It also fully appears, from the libellants' testimony, that there are very many wharves in Boston where the bottoms are dredged on a gradual incline, that vessels frequently lie with their sterns or bows projecting by jogs, and that it is a negligent way of dredging a dock to do it in such a way that a vessel cannot take ground anywhere alongside of a wharf.

McKie, p. 172, int. 3; p. 174, int. 11.
Curtis, wharfinger of T wharf, where there are ten jogs, p. 174. ints. 2–4; p. 177, cross-int. 14.
Crocker, p. 178, ints. 5, 6; p. 179, int. 10; p. 181, int. 17.
Blaney, p. 182, ints. 3, 8, 11.
Davison, p. 185, ints. 7, 9; p. 186, ints. 17, 18.
Ricker, p. 192, cross-int. 31.
Snow, p. 194, ints. 6, 7; p. 195, ints. 8, 9.
Reed, p. 196, ints. 6, 8, 9; p. 197, ints. 12, 13.
Hodgdon, p. 198, ints. 3, 4.
Plummer, p. 199, ints. 6, 9.
Steelman, p. 202, int. 11; p. 203, int. 12.
Loring, p. 225, ints. 3–5.

The "Bowdoin," in July, 1868, was placed with her stern forty-eight feet below the jog at Damon's wharf, by the foreman of that wharf. (Randall, p. 218, ints. 43, 53.)

When the "Bowdoin" was hauled ahead after the accident, her stern lay several feet by the jog.

Randall, p. 217, int. 26.
Swett, p. 239, int. 4.
Bryant, p. 210, int. 44.
Manning, p. 97, cross-int. 26.

Mulliken testified, in the District Court, that it was eight or ten feet by the jog. (P. 216, int 5.)

The objects of jogs is simply to give more room.

Curtis, p. 176, cross-int. 9.
Blaney, p. 182, int. 9.
Davison, p. 185, int. 10.

Davis is called by the appellants to show that the laying a vessel by a jog is negligence. (P. 149, int. 2.) On cross-examination, he gives as his reason that the keel line of the upper berth would not correspond with that of the lower. (P. 151, cross-ints. 10, 11.)

In this dock, however, it appears from Buchanan's plan, Exhibits 2 and 4, that the keel line is the same. The jog is a narrow one, and as wider vessels lie below, this greater width with the big spar fender, which Oakman says is used at the floating berths, would make the keel line the same.

Baker (p. 156, int. 7) thinks it negligent to lay a vessel by a jog. On cross-examination, his reason is that the slope of the dock might be so great that the cabin windows in the stern, if the vessel had any there, might let in the water. (P. 157, cross-int. 21.)

Prouty, the appellants' witness, says that a jog does not necessarily indicate that a vessel cannot take ground in safety unless she lies entirely above or entirely below the jog, and that some wharves have a gradual incline opposite the jog. (P. 163, cross-ints. 1–3.)

Ingraham, the appellants' witness, says he don't know that a jog is any indication of the depth of water. (P. 166, int. 4.)

The other witnesses called on this point by the appellants are persons interested in wharves where the bottom is so badly dredged that a vessel must take ground in a particular place.

That there is no uniformity in dredging docks opposite jogs, is shown not only by the evidence in this case, but by the profiles of the two sides of the dock in Exhibit 2.

The jog on the westerly side of the dock is one hundred feet from the

head of the wall, and there is a depth of five feet below mean low water. The descent on the plan begins twenty feet above the jog.

In this same Exhibit 2, the descent is represented in the easterly keel-track precisely at this jog.

The appellants might just as well set up a custom to haul the stern of a vessel 20 feet above a jog as to a jog.

Though Buchanan has sworn that he made no change in the profile of the easterly keel-track, it is obvious, that according to Exhibit 4, there is no marked descent until you get to a point nearly 140 feet from the head of the dock, 15 feet below the jog.

According to the measurements given by Buchanan (p. 138, int. 15), leaving out the measurements at the jog, 125 feet from the head of the dock, which it appears by cross-int. 3, p. 142, was not made in 1866, we find the descent on a gradual incline, until we come to the point 100 feet from the head of the dock, or 25 feet above the jog: then there is another gradual incline until we come to 140 feet from the head of the dock, when there is another gradual incline to the end of the dock.

Thus, from 75 feet from the head of the dock to 100 feet, the descent is $\frac{8}{10}$ of a foot; from 100 to 110, the descent is, $1\frac{5}{10}$; from 110 to 120, $\frac{8}{10}$; from 120 to 130, $\frac{6}{10}$; from 130 to 140, $\frac{7}{10}$; from 140 to 150, $1\frac{9}{10}$; from 150 to 160, $\frac{7}{10}$; from 160 to 170, 1 foot; from 170 to 180, 1 foot; from 180 to 200, $1\frac{2}{10}$.

It thus appears, that there is no abrupt descent for fifteen feet below the jog, and that the descent there is only four-tenths of a foot more abrupt than the descent from twenty-five to fifteen feet above the jog.

Oakman too, says, that in his judgment, if the vessel had been ten feet further ahead than she was, she wouldn't have been injured. (P. 134, cross-int. 61.)

The entire fabric reared upon the jog theory, and the alleged warning given by Keating and Haskell, falls to the ground.

VII. THE DAMAGE WAS NOT CAUSED BY THE VESSEL LYING ACROSS THE MUD BANK BETWEEN THE TWO WHARVES.

The appellants were compelled to abandon the theory set up in their answer that the damage was caused by a descent at or near the jog, because it was found that there was not sufficient difference in the two berths to cause any injury, and because the part of the vessel which was injured was not near this descent, but was near amidships over the coal.

They then adopted the theory that the injury was caused by the vessel lying across the bank of mud, which is between the easterly and the westerly wharves.

Oakman (p. 125, int. 24,) says, "Her bow was on the inside of the bed; her midships — her main rigging right abaft the midships, — were right across the bank between the two wharves — lying across this mud bank thrown up between the two berths; her stern overhanging deep water partially supported."

His theory also is, that her bow being too near the wharf caused the list, but that the main injury was caused by being across this mud bank.

Judge Woodruff considered this theory to be an after-thought, and held that on this point the defence wholly failed.

7 Blatchf. C. C. 302.

This defence is not set up in the answer, and is not admissible.

It is perfectly obvious, also, that the vessel was not on that Monday morning in any such position as the appellants now claim.

The entire width of the dock above the jog, as appears by Buchanan's plan, is fifty-four feet. The top of this mud bank would be about half way across, or twenty-seven feet from the wall. If the midships of this vessel, which is one hundred and five feet long, were across this bank, her stern would be between the westerly keel-track and the other side of the dock, and her jib-boom and bowsprit would be over the side of the wharf.

Paine, p. 232, int. 13.
Swett, p. 239, int. 8.

The libellants prove, and the appellants do not contest the point, that neither the jib-boom or bowsprit were over the wall.

Pierce, p. 227, int. 7.
Paine, p. 232, ints. 12, 14.
Swett, p. 239, int. 11.

To place the vessel in the position Oakman indicates, would make her stern-post fifty-five feet from the easterly wharf, while Oakman does not pretend to put it over twenty-five or thirty feet. (Oakman, p. 131, cross int. 31.)

This theory is entirely inconsistent with the position in which the vessel was placed when she was hauled in to the wharf, and with the position in which we show she was, on Monday morning. See *ante*, p. 13.

VIII. THE APPELLANTS WERE GUILTY OF NEGLIGENCE IN NOT HAVING A PERSON ON THE WHARF TO SEE THAT THE "BOWDOIN" WAS PROPERLY PLACED WHEN SHE CAME IN.

It is customary for wharf owners to have some one on the wharf on Sundays, as well as on other days, to see to vessels that are coming in.

McKie, p. 172, ints. 6, 7.
Crocker, p. 179, ints. 15, 16.
Blaney, p. 183, ints. 14, 15.
Davison, p. 186, ints. 14–16.
Ricker, p. 190, int. 9.

There seems to be no dispute, that it is customary at all wharves to have a person on week days to see that vessels are properly placed. The appellants have, however, attempted to show that at certain private coal wharves it is not customary to have any one there on Sunday.

The witnesses called on this point are Snelling, Fletcher, Nelson, Low. Of these, Snelling's wharves are used almost exclusively for his own business, and the bottoms of the docks are in good condition, so that a vessel can take ground anywhere without damage. (P. 251, cross-ints. 1–3.) He knows only the usages at his own wharf. (P. 251, int. 6.)

Fletcher knows only the usages at his own wharf. (P. 256, int. 5.) He always attends to vessels himself week days; and, if he knows a vessel is coming in on Sunday, admits he sometimes sends a man to see that she takes her proper berth. (P. 257, cross-ints. 5, 7.) This wharf is a private wharf.

Nelson has three berths at his wharf; one on each side of the wharf and one at the end. (P. 259, cross-int. 6.) There could, therefore, be no difficulty in a vessel's taking her proper berth. His practice on week days does not differ materially from his practice on Sundays. (P. 259, cross-ints. 8, 9.) This wharf is also a private wharf. (P. 260, cross-int. 10.)

Low is wharfinger at the wharves of the Boston Gas Light Company. These wharves are used exclusively for the business of the company, and the berths at them are deep-water berths, where vessels do not lie aground. (P. 249, cross-ints. 2, 4.)

The attempt to show a custom not to have a person on a private

wharf on Sunday, has failed; and if it were proved, it would make no difference, for the wharves of the appellants are not private wharves, but are used partly for their own business, and partly for that of other people. (Oakman, p. 253, cross-int. 14.)

Whatever might be the law, where the bottom was good, and there was no danger to a vessel hauling in, usage cannot exonerate the wharf-owner from doing all in his power to provide for the safety of vessels coming to his wharf, when the bottom of his dock is in such a condition that a vessel must lie exactly in a particular spot in order to escape damage.

IX. The surveyors' fees were properly allowed.

Potter *v.* Ocean Ins. Co. 3 Sumner, 42, 44.
The Ship Fortitude, " " 261.
Fiedler *v.* New York Ins. Co. 6 Duer, 282.
Marvin on Salvage, p. 12, p. 255.

In the Grapeshot, 9 Wall. 143, the fact that a survey was not called, was considered as going far to warrant the conclusion that no real necessity existed. When called, the expense should therefore be allowed.

At the hearing in the District Court the appellants contended that there were more than the usual number of surveyors. What is the usual number and whether seven were required in this case, are questions of fact not open at this hearing.

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